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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM 1974

No. 74-389

No. 74-428

ALBERMARLE PAPER CO., *Petitioner*

v.

JOSEPH P. MOODY, ET AL.

HALIFAX LOCAL 425, PAPERMAKERS AND PAPERWORKERS, *Petitioner*

v.

JOSEPH P. MOODY, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITIONS FOR WRITS OF CERTIORARI FILED OCTOBER 7, 1974 AND OCTOBER 15, 1974 CERTIORARI GRANTED DECEMBER 16, 1974

In The

SUPREME COURT OF THE UNITED STATES

October Term 1974

No. 74-389

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Albermarle Paper Co., *Petitioner*

v.

Joseph P. Moody, et al., *Respondents*

Halifax Local 425, Papermakers and Paperworkers, *Petitioner*

v.

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Sept. 26, 1966—Defendant, Halifax Local 425's Motion to Dismiss filed.

Sept. 26, 1966—Defendant, United Papermakers and Paperworkers International Union's Motion to Dismiss filed.

Sept. 28, 1966—Defendant, Halifax Local 425's Amended Motion to Dismiss filed.

Oct. 5, 1966—Defendant, Albemarle Paper Co.'s Motion for Summary Judgment filed.

Oct. 7, 1966—Defendant Albemarle Paper Co.'s Motion for Summary Judgment filed.

Nov. 22, 1966—Plaintiffs' Memorandum in Opposition to Summary Judgment filed.

Dec. 20, 1966—Defendants, United Papermakers and Paperworkers and Halifax Local 425's Motion for Summary Judgment filed.

Jan. 9, 1967—Plaintiffs' Response to Defendants United Papermakers and Paperworkers and Halifax Local 425 Motions for Summary Judgment and Motion to Dismiss filed.

July 26, 1967—Defendant, Albemarle Paper Co.'s Answer filed.

July 26, 1967—Defendant Albemarle Paper Co.'s Motion to Dismiss filed.

July 28, 1967—Defendant Halifax Local 425's Answer filed.

Nov. 24, 1967—Order and Memorandum Opinion entered denying Defendant, Albemarle Paper Co.'s Motion to Dismiss.

June 25, 1970—Plaintiffs' Motion to Add or Join Parties Defendant filed.

Aug. 20, 1970—Defendant, Albemarle Paper Co.'s Motion to Dismiss filed.

Sept. 29, 1970—Order and Opinion entered that Motion to Add or Join the Albemarle Paper Co., a Delaware Corporation, the Hoerner Waldorf Corp., the First Alpaco Corp., and the Ethyl Corp. is allowed and Motion to Dismiss on behalf of Defendant, Albemarle Paper Co., a Virginia Corporation, as to it and to all parties herein joined as parties-defendant is denied.

Oct. 15, 1970—Amended Order entered.

Dec. 3, 1970—Defendant, Albemarle Paper Co.'s (Delaware) Answer filed.

Dec. 3, 1970—Defendant, Hoerner Waldorf Corp.'s Answer filed.

Dec. 28, 1970—Defendant, Ethyl Corp.'s Answer and Cross-Claim filed.

Mar. 15, 1971—Defendant, Ethyl Corp.'s Notice of Dismissal of Cross-Claim filed.

May 28, 1971—Order entered requiring Plaintiffs to answer Supplemental Interrogatory no later than June 25, 1971.

June 15, 1971—Order entered defining class and directing Plaintiffs to answer Supplemental Interrogatory by July 10, 1971.

June 18, 1971—Order entered directing that all parties and their counsel are forbidden directly or indirectly to communicate concerning this action with any potential or actual class member not a formal party to action without consent and approval of proposed communication of the Court.

July 8, 1971—Order entered directing Notice to members of the class.

July 14, 1971—Plaintiffs' Motion for Leave of Counsel for Plaintiffs to Communicate with Class Members for Purposes of Trial Preparation filed.

July 14, 1971—Plaintiffs' Motion for Clarification filed.

July 14, 1971—Plaintiffs' Motion for Severance and the Appointment of a Master filed.

July 25, 1971—Trial commenced before the Hon. F. T. Dupree, Judge, United States District Court.

Nov. 11, 1971—Order and Memorandum Opinion entered enjoining Defendants from discriminating against Negro employees and setting out certain procedures to be followed.

Nov. 22, 1971—Plaintiffs' Motion to Alter or Amend the Judgment filed.

Dec. 7, 1971—Plaintiffs' Notice of Appeal filed.

Jan. 3, 1972—Order entered extending time for transmittal of record on appeal.

Mar. 13, 1972—Record on appeal filed and appeal docketed in the United States Court of Appeals for the Fourth Circuit.

May 3, 1972—Order entered allowing Equal Employment Opportunity Commission to participate as Amicus Curiae.

May 8, 1972—Order entered extending time to file appellee's brief and reply brief.

May 22, 1972—Appellant's Motion for Extension of Time to File Brief to May 29, 1972 filed and Motion granted.

Aug. 17, 1972—Appellant's Motion for Extension of Time to File Reply Brief to August 22, 1972, filed and Motion granted.

Oct. 3, 1972—Cause argued before Boreman, Bryan and Craven, Circuit Judges and submitted.

Feb. 20, 1973—Opinion of the United States Court of Appeals for the Fourth Circuit filed.

Feb. 20, 1973—Judgment of the District Court reversed. Judgment filed.

Mar. 6, 1973—Petition for Rehearing and Suggestion of a Rehearing En Banc, filed.

Mar. 6, 1973—Petition for Rehearing En Banc on Behalf of Appellee, Halifax Local 425, et al. filed.

June 25, 1973—Order Granting a Rehearing En Banc filed.

Aug. 31, 1973—Appellant's Supplemental Brief on Rehearing En Banc filed.

Aug. 31, 1973—Appellee Employer's Supplemental Brief filed.

Sept. 4, 1973—Amicus Curiae Brief for the United States and the Equal Employment Opportunity Commission filed.

Oct. 28, 1973—Cause argued En Banc before Haynsworth, Chief Judge, Boreman, and Bryan, Senior Circuit

Judges, Winter, Craven, Butzner, Russell, Field and Widener, Circuit Judges and submitted.

Dec. 5, 1973—Certificate mailed to Clerk of the United States Supreme Court.

Dec. 5, 1973—Held in abeyance pending decision of the Supreme Court of the United States on Court of Appeals' Certificate.

July 22, 1974—Order rescinding the Court of Appeals' Order of June 25, 1973 and denying the Petitions for Rehearing and Rehearing En Banc filed.

Aug. 9, 1974—Certified copy of Order of the Supreme Court regarding question to the Court answered in the negative.

Aug. 29, 1974—Motion of Halifax Local 425 for recall and stay of mandate filed.

Sept. 4, 1974—Appellee, Employers' Motion to Recall Issuance of Mandate filed.

Sept. 13, 1974—Order recalling and staying mandate, not to exceed thirty (30) days, pending application for certiorari, filed.

Oct. 7, 1974—Notice evidencing the filing of Petition for a Writ of Certiorari in the Supreme Court October 7, 1974 filed (No. 74-389).

Oct. 22, 1974—Certificate evidencing the docketing of the case in the Supreme Court October 15, 1974 filed (No. 74-428).

Dec. 23, 1974—Order Granting Certiorari December 16, 1974 in No. 74-389.

Dec. 23, 1974—Order Granting Certiorari December 16, 1974 in No. 74-428.

* * *

In The
UNITED STATES DISTRICT COURT
FOR THE
Eastern District Of North Carolina
Wilson Division

Civil Action No. 989

Joseph P. Moody, Theodore Daniels, Henry Hill and Arthur Mitchell,

Plaintiffs,

v.

Albemarle Paper Company; United Papermakers and Paperworkers, A.F.L.-C.I.O. and Halifax Local No. 425, United Papermakers and Paperworkers, A.F.L.-C.I.O.,

Defendants.

COMPLAINT
[Filed August 25, 1966]

I

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343 and 42 U.S.C. § 2000e, this being a suit in equity authorized and instituted pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., providing for injunctive and other relief against racial discrimination in employment.

II

Plaintiffs bring this action on their own behalf and on behalf of others similarly situated pursuant to Rule 23(a)

and (b) of the Federal Rules of Civil Procedure. There are common questions of law and fact affecting the rights of others seeking equal employment opportunities without discrimination on the basis of race and color who are so numerous as to make it impracticable to bring them all individually before the Court; the claims and defenses of the plaintiffs are typical of the claims and defenses of the class; and the plaintiffs will fairly and adequately protect the interests of the class. The defendants have adopted rules and policies and have refused to eliminate same, which have deprived and will continue to deprive the plaintiffs and others of their class of their rights to equal employment opportunities without regard to their race or color as secured to them by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.

III

This is a proceeding for a permanent injunction to restrain the defendants from maintaining any policy, practice, custom or usage of withholding, denying, attempting to withhold or deny, and depriving or attempting to deprive or otherwise interfering with or limiting the rights of plaintiffs and others of their class to equal employment opportunities at the Roanoke Rapids, North Carolina plant of defendant Albemarle Paper Company without discrimination on the ground of race or color.

IV

Plaintiffs Joseph P. Moody, Theodore Daniels, Henry Hill and Arthur Mitchell are Negro citizens of the United States and the State of North Carolina, residing in the County of Halifax, North Carolina. Plaintiffs are and have been employed at the Albemarle Paper Company plant at Roanoke Rapids, North Carolina, for several years.

V

A. Defendant Albemarle Paper Company is a corporation incorporated under the laws of the State of Virginia, and authorized as a junior corporation to do business in the State of North Carolina, with power to sue and be sued in its corporate name. Said defendant operates a paper plant in the City of Roanoke Rapids, North Carolina, processing wood and pulp into paper. Said defendant is an employer in an industry which affects interstate commerce and employs more than 100 employees.

B. Defendants United Papermakers and Paperworkers, A.F.L.-C.I.O. and its Halifax Local No. 425 (hereinafter referred to as "Union") are international and local labor organizations representing the employees of defendant Albemarle Paper Company in dealing and negotiating with said company concerning terms, conditions and privileges of employment. The Union is engaged in an industry which affects interstate commerce and has more than 100 members.

VI

A. Defendant Albemarle Paper Company has followed and presently follows a practice and policy of limiting and classifying its employees on the basis of race or color. Defendant company maintains segregated eating and rest rooms and medical facilities for its employees. All matters regarding compensation, terms, conditions and privileges of employment of plaintiffs and the class they represent have been governed by collective bargaining agreement entered into by defendants Albemarle Paper Company and the Union.

B. Defendants have entered into labor agreements to govern the terms, conditions, privileges, wages and benefits

of employees of the Albemarle Paper Company plant at Roanoke Rapids, North Carolina, which have included provisions for a seniority system designed to and having the effect of discriminating against plaintiffs and others of their class solely because of their race and color. The last such agreement was executed by defendants in August, 1965 and extends through August, 1968.

C. Defendants have limited the employment opportunities of plaintiffs and other Negro employees, and discriminated against plaintiffs and other Negro employees in the compensation, terms, conditions and privileges of employment because of race and color.

VII

Defendants' discrimination against plaintiffs and others of their class with respect to terms, conditions and privileges of employment and classification of plaintiffs and others of their class in employment were intended to deny and have had the effect of denying the plaintiffs and others of their class equal employment opportunities and to otherwise adversely affect their status as employees solely because of their race and color in violation of their rights secured to them by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.

VIII

Neither the State of North Carolina nor the County of Halifax nor the City of Roanoke Rapids has a law prohibiting the unlawful practices alleged herein.

On or about May 9, 1966, the plaintiffs filed a complaint with the Equal Employment Opportunity Comission alleging denial by defendants of their rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq. On or about August 1, 1966, the plaintiffs received

a letter from the Commission advising that their right to maintain civil actions for relief in the United States District Court.

IX

Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs alleged herein and this suit for a permanent injunction is their only means of securing adequate relief. Plaintiffs and the class they represent are now suffering and will continue to suffer irreparable injury from defendants' policy, practice, custom and usage as set forth herein unless and until enjoined by this Court.

Wherefore, plaintiffs respectfully pray this Court advance this cause on the docket, order a speedy hearing at the earliest practicable date; cause this case to be in every way expedited, and upon such hearing to:

1. Grant plaintiffs and the class they represent a permanent injunction enjoining defendants, Albemarle Paper Company and the Union, their agents, successors, employees, attorneys and those acting in concert and participation with them and at their direction from continuing or maintaining any policy, practice, custom or usage of denying, abridging, withholding, conditioning, limiting or otherwise interfering with the rights of the plaintiffs and others of their class to equal employment opportunities including equal rights to employment, equal terms, conditions and privileges of employment as secured by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.

2. Allow plaintiffs their costs herein, including reasonable attorneys' fees and such other additional relief as may appear to the Court to be equitable and just.

Respectfully submitted,

/s/ J. LeVonne Chambers

In The

UNITED STATES DISTRICT COURT

FOR THE

Eastern District of North Carolina

Wilson Division

[Title Omitted in Printing]

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

[Filed November 22, 1966]

II

This Action May Properly Be Brought as a Class Action under Rule 23 of the Federal Rules of Civil Procedure.

Rule 23(a) and (b) (as amended effective July 1, 1966), set forth the requirements for bringing a class action. The basic requirements of Rule 23(a)—(1) sizeable class, (2) common questions of law or fact, (3) claims typical of class presented by plaintiffs and, (4) adequate representation of class by plaintiffs—all are duly alleged by plaintiffs and are obviously met. We do not understand defendant to challenge plaintiffs' credential regarding any of these requirements and they, therefore, stand as alleged. It may be noted that regarding requirement (2), defendant expressly concedes that "there are questions which relate to all mem-

bers of the class as well as questions which relate to the Plaintiffs."[23]

The special requirements set forth in Rule 23(b) are also by plaintiffs. Rule 23(b) sets forth three special situations, any one of which will justify a class action. Plaintiffs seek to maintain this class action under subdivision (b)(2) of Rule 23 which requires that

> "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole."

Plaintiffs' action does not merely fall under subdivision (b)(2). Rather plaintiffs' action is *the model* which (b)(2) was designed to include. The comment of the advisory committee which prepared the new Rule 23 makes this crystal clear.

> *"Subdivision (b)(2).* This subdivision is intended to reach situations where a party has taken action or refused to take action with respect to a class, and final relief of an injunctive nature or of a corresponding declaratory nature, settling the legality of the behavior with respect to the class as a whole, is appropriate. Declaratory relief 'corresponds' to injunctive relief when as a practical matter it affords injunctive relief or serves as a basis for later injunctive relief. The subdivision does not extend to cases in which the appropriate final relief relates exclusively or predominantly to money damages. Action or inaction is directed to a class within the meaning of this subdivision even if it

[23] Defendant's Memorandum, p. 15.

has taken effect or is threatened only as to one or a few members of the class, provided it is based on grounds which have general application to the class.

Illustrative are various actions in the civil-rights field where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration." Advisory Committee Note to amended Rule 23, 86 Sup. Ct. No. 11, Yellow Supp. at 34 (1966) (Emphasis added).

Plaintiffs so abundantly meet all of the requirements of Rule 23 that defendant could not seriously challenge plaintiffs' credentials under the Rule. To defendant's credit, it does not attempt to do so. As we understand defendant's position, it does not question whether plaintiffs meet the requirements of Rule 23, but rather suggests that class actions are prohibited by Title VII even to a party who qualifies under Rule 23. Defendant advances two points in support of this position:

(1) Plaintiffs should not be permitted to sue on behalf of other members of their class since the other members have not exhausted their remedies before the Commission.

(2) The scheme of Title VII is such that the Attorney General is vested with exclusive authority to bring class actions.

This memorandum will take up defendant's points in order.

1. Plaintiffs Have The Right To Sue For Other Class Members Who Have Not Exhausted Their Remedies.

It is important to understand the exact nature of the class relief being sought by plaintiffs. No money damages are sought for any member of the class not before the

court, nor is specific relief in the way of job changes, promotions or the like being sought for any member of the class not before the court. The only relief sought for the class as a whole is that defendants be enjoined from treating the class as a separate group and discriminating against the class as a whole in the future (Complaint, Para. IX).

The issue of discrimination against the class as a whole is the essence of this action and it was the essence of the complaints filed before the Commission. The proof involved in establishing this discrimination will necessarily include not only proof of plaintiffs' treatment but also proof of the treatment of all other Negroes employed by defendant. This common issue of class discrimination has been presented to the Commission as fully as it can be presented. There is no need for, and indeed no sense in, presenting this common issue to the Commission time and again when the Commission has once shown an inability to resolve it.

It may well be that any employee seeking separate and specific relief such as an individual promotion should first address his individual grievance to the Commission. But the matter of specific individual relief for other class members is not before this Court. The only class issue is the common one of enjoining general class discrimination in the future. With regard to this relief there are no specifically aggrieved individuals since no specific individual can be aggrieved by a possible future event. The grievance is a class grievance and it must be presented by representatives of the class if it is to be presented at all.

The point was well made by Judge Gray in *Hall* v. *Werthan Bag Corp.*, 251 F.Supp. 184 (M.D. Tenn. 1966). That case, like the instant case, involved a Title VII class action where a broad injunction against future discrimination was sought. In addition, specific relief for the named individual plaintiffs was sought. In ruling that a class ac-

tion on the common issue of class discrimination was proper, Judge Gray stated:

> "Racial discrimination is by definition a class discrimination. If it exists, it applies throughout the class. . . . [A]lthough the actual effects of a discriminatory policy may . . . vary throughout the class, the existence of the discriminatory policy threatens the entire class. And whether the Damoclean threat of a racially discriminatory policy hangs over the racial class is a question of fact common to all members of the class.
>
> * * *
>
> In regard to the injunctive relief sought in this case, . . . the purpose of the requirement of resort to the Commission has already been served. In regard to whatever back pay or reinstatement might be sought as ancillary relief, however, the purpose of the administrative remedies requirement has been satisfied only as to Robert Hall, for the Commission has not attempted conciliation in regard to rectifying any alleged injuries which other Negro employees or would-be employees may claim to have suffered as a result of the defendant's alleged discrimination.
>
> Upon consideration, therefore, the court is of the opinion that the complaint properly states a class action under Rule 23(a) insofar as it seeks a prohibitive injunction." 251 F.Supp. at 186, 188.

In the instant case, plaintiffs ask that this Court adhere to the sound distinction drawn by Judge Gray between the class injunctive relief and ancillary specific individual relief.

* * *

In The

UNITED STATES DISTRICT COURT

FOR THE

Eastern District of North Carolina

Wilson Division

C.A. No. 989

Joseph P. Moody, Theodore Daniels, Henry Hill, and Arthur Mitchell,

Plaintiffs,

v.

Albemarle Paper Company; United Papermakers and Paperworkers, A.F.L.-C.I.O. and Halifax Local No. 425, United Papermakers and Paperworkers, A.F.L.-C.IO.,

Defendants,

Equal Employment Opportunity Commission,

Intervenor.

MEMORANDUM OPINION and ORDER

[Filed July 6, 1967]

Plaintiffs bring this action on their own behalf and on behalf of other Negroes similarly situated under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., alleging violations by their employer, their local union, and

the defendant international union of their rights to equal employment opportunities. Jurisdiction in this Court is provided by the Act and by 28 U.S.C. § 1343.

Several motions have been filed by the defendants and are now before the Court for ruling. Within 20 days of service of the complaint, the local union moved to dismiss the action or in lieu thereof to quash the return of service of the summons upon the grounds that service had been improperly made and that the complaint fails to state a claim against the local union upon which relief may be granted. In a separate motion filed on the same date, and within 20 days of service upon it, the international union likewise moved to dismiss the action or in lieu thereof to quash the return of summons upon the grounds that service was improperly made and that the complaint fails to state a claim upon which relief against it may be granted. The employer, Albermarle Paper Company, has filed a Motion for Summary Judgment upon the following grounds: (1) that the Court lacks subject matter jurisdiction and that the complaint fails to state a claim upon which relief may be granted, for the reason that plaintiffs have not exhausted their administrative remedies before the Equal Employment Opportunity Commission as is required by Section 706(e) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(e); (2) that the complaint fails to state a claim upon which relief may be granted in a class action. Oral argument was presented at a hearing requested by the parties, and numerous briefs and memorandums of law have been submitted in support of the parties' respective positions. The objections to the sufficiency of service of process upon the local union and the international union were withdrawn at the hearing, leaving for decision the jurisdictional questions and that of whether the complaint states a claim for relief as to each defendant.

The Court is of the opinion that only one of the motions, that of the international union, has merit. Jurisdictional prerequisites for institution of an action under Title VII of the Civil Rights Act of 1964 have been the subject of much recent litigation. See, *e.g., Hall* v. *Werthan Bag Corp.,* 251 F.Supp. 184 (M.D. Tenn. 1966); *Dent* v. *St. Louis-San Francisco Rwy Co.,* 265 F.Supp. 56 (N.D. Ala. 1967); *Robinson* v. *Lorillard,* Civil Action No. C-141-G-166 (M.D.N.C. 1967); *Quarles* v. *Phillip Morris, Inc.,* Civil Action No. 4544 (E.D. Va. 1967); *Evenson* v. *Northwest Airlines, Inc.,* Civil Action No. 3961, 35 U.S.L. Week 2601 (E.D. Va. 1967); *Anthony* v. *Brooks,* Civil Action No. 9947 (N.D. Ga. 1967); *Mickel* v. *South Carolina State Employment Service,* No. 11069 (4th Cir. May 3, 1967). From a reading of the foregoing cases, it appears that the better rules regarding jurisdictional prerequisites and the propriety of entertaining an action under Title VII are as follows:

1. *Subject Matter Jurisdiction.* After an aggrieved party has filed a written complaint with the Equal Employment Opportunity Commission and has received notice from the Commission that voluntary compliance within sixty days from receipt of the complaint by the Commission has not been effected, no further formal efforts toward conciliation by the Commission are necessary to open the district courts to a private civil action by the complainant against a respondent named in the charge theretofore filed with the Commission. To the extent that *Dent, supra,* is inconsistent with this ruling, it is disapproved and not followed.

2. *In Personam Jurisdiction.*

(a) *Parties Plaintiff:* All potential parties plaintiff in a class action seeking relief under the Act are not required

to have all joined in as a group or class in the prior written complaint to the Commission. This Court approves and adopts the rationale of *Hall, supra,* in this respect.

(b) *Parties Defendant:* Although, as indicated, all *plaintiffs* in a class action under the provisions of Title VII are not required individually to exhaust their administrative remedies before the Commssion where some members of the class have already done so, it is a quite different matter as to who may be made a party *defendant:* a plaintiff or a class of plaintiffs may institute a civil action in federal district court under Section 706(e) of the Act against only an employer, employment agency, or labor organization which was a respondent named in the charge filed with the Commission. Whether this be treated as a question of subject matter jurisdiction or personal jurisdiction, the requirement that all defendants be named in the charge filed with the Commission goes to the competence of a district court to entertain the action in respect to the party in question (international union), as defined in clear language of the statute. *Mickel* v. *South Carolina State Employment Service, supra.* The contention that the local union is the agent of the international union is without merit, the records indicating that the local is merely affiliated with the international and enjoys an autonomous existence. This is insufficient to establish responsibility of the international for any alleged unlawful conduct on the part of the local.

ORDER

It is therefore Ordered that the Motion to Dismiss filed by Halifax Local No. 425, United Papermakers and Paperworkers, A.F.L.-C.I.O. be, and the same is hereby denied;

It is Further Ordered that the Motion of United Papermakers and Paperworkers, A.F.L.-C.I.O. (International) to dismiss be, and the same is hereby allowed;

It is Further Ordered that the Motion for Summary Judgment filed by Albemarle Paper Company be, and the same is hereby denied.

It is Further Ordered that the Clerk shall serve copies of this Memorandum Opinion and Order upon all counsel of record.

Let this Order be entered forthwith.

/s/ John D. Larkins, Jr.
John D. Larkins, Jr.
United States District Judge

In The

UNITED STATES DISTRICT COURT

FOR THE

Eastern District of North Carolina

Wilson Division

(Civil Action No. 989)

[Title Omitted in Printing]

ANSWER

[Filed July 26, 1967]

Defendant, Albemarle Paper Company, for answer to the complaint served on it in this action, says:

1. Defendant admits the enactment of the Acts of Congress as alleged in paragraph 1 of the Complaint, but denies that they are applicable in the premises and, further answering, Defendant denies that it has deprived Plaintiffs of any rights secured them by any of the Acts whose existence is alleged in paragraph 1 of the Complaint, or otherwise.

2. Defendant denies the allegations of paragraph 2 of the Complaint.

3. Defendant denies the allegations of paragraph 3 of the Complaint.

4. Defendant admits the allegations of paragraph 4 of the Complaint.

5. Defendant admits the allegations of paragraph 5 of the Complaint.

6. Defendant denies the allegations of paragraph 6 of the Complaint.

7. Defendant denies the allegations of paragraph 7 of the Complaint.

8. Defendant admits that neither the State of North Carolina nor the County of Halifax nor the City of Roanoke Rapids have enacted laws or ordinances regulating unlawful employment practices. Defendant is without knowledge as to the remainder of the allegations of paragraph 8 of the Complaint and accordingly denies the same, except that Defendant admits that on or about August 11, 1966, it received copies of Complaints of "Unfair Employment Practices Under the 1964 Civil Rights Act Title 7," signed by the Plaintiffs and verified on February 20, 1966.

9. Defendant denies the allegations of paragraph 9 of the Complaint and denies that Plaintiffs are entitled to any of the relief prayed for, or any other relief.

Affirmative Defenses

First Defense:

The Complaint fails to state a claim against Defendant upon which relief may be granted.

Second Defense:

The Complaint is barred by the Statute of Limitations inasmuch as there is no allegation in the Complaint that the alleged conduct occurred within 90 days prior to the

filing of charges with the Equal Employment Opportunity Commission.

Third Defense:

The Complaint fails to state a claim upon which relief can be granted in a class action, in that the rights, if any, of the members of the alleged class are several and not joint and there is no common question of law or fact that is affecting the rights of the members of the alleged class, and no common relief can be granted in this action.

Fourth Defense:

The Court lacks jurisdiction over the subject matter of this action and the Complaint fails to state a claim upon which relief may be granted because the Plaintiffs have not exhausted their remedies before the Equal Employment Opportunity Commission as required by Section 706(e) of the Act, 42 U.S.C. § 2000e-5.

Fifth Defense:

The Complaint fails to state a claim upon which relief can be granted in a class action because the Plaintiffs have not notified the members of the class of their right to participate in, or be excluded from, this action as required by Rule 23 of the Federal Rules of Civil Procedure.

Sixth Defense:

The Complaint should be dismissed because the International Union, United Papermakers and Paperworkers, AFL-CIO, is an indispensable party to this action.

Wherefore, having fully answered, Defendant prays that this action be dismissed and that it be awarded its costs herein expended, including reasonable attorneys' fees.

Albemarle Paper Company,

By .....
Its Counsel

Francis V. Lowden, Jr.
Paul M. Thompson
Hunton, Williams, Gay, Powell & Gibson
700 East Main Street
Richmond, Virginia 23212

Allsbrook, Benton, Knott, Allsbrook & Cranford
P. O. Box 108
Kidd Building
Roanoke Rapids, North Carolina 27870
Of Counsel

[Certificate of Service Omitted in Printing]

In The
UNITED STATES DISTRICT COURT
FOR THE
Eastern District of North Carolina
Wilson Division
(Civil Action No. 989)
[Title Omitted in Printing]

ANSWER

[Filed July 28, 1967]

The defendant, Halifax Local No. 425, United Papermakers and Paperworkers, A.F.L.-C.I.O., one of the above named defendants answering the Complaint of the plaintiffs says:

1. Paragraph 1 of the plaintiffs' Complaint is admitted.

2. Paragraph 2 of the plaintiffs' Complaint is denied.

3. Answering paragraph 3 of the plaintiffs' Complaint, it is admitted that the nature of the relief sought by the plaintiffs is injunctive; however, this defendant has not committed any acts for which they should be subjected to the relief sought by the plaintiffs and, therefore, the remaining allegations of paragraph 3 are denied.

4. Paragraph 4 of the plaintiffs' Complaint is admitted.

5. Answering paragraph 5 of the plaintiffs' Complaint, this answering defendant admits the allegations of said paragraph as the same pertain to this answering defendant. Except as admitted, this defendant denies the remainder of the allegations of said paragraph.

6. The allegations of paragraph 6 of the plaintiffs' Complaint are denied.

7. The allegations of paragraph 7 of the plaintiffs' Compaint are denied.

8. This answering defendant does not have sufficient information as to the allegations in paragraph 8 of the plaintiffs' Complaint to form a reasonable belief as to the truth or falsity thereof, and, therefore, denies the same.

9. The allegations of paragraph 9 of the plaintiffs' Complaint are denied.

For A First Further Answer And Defense, This Answering Defendant Alleges:

1. Administrative remedies for persons alleging denial of rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq. are provided by said Act.

2. The plaintiffs herein have failed to exhaust the administrative remedies before the Equal Employment Opportunity Commission as provided by the Civil Rights Act of 1964, prior to the institution of this action, and such remedies are required to be exhausted prior to the institution of an action of the nature herein brought by the plaintiffs.

And For A Second Further Answer And Defense, This Answering Defendant Alleges:

The plaintiffs have failed to exhaust the conciliation remedies provided in the Civil Rights Act of 1964 through the Equal Employment Opportunity Commission.

And For A Third Further Answer And Defense, This Answering Defendant Alleges:

1. The Constitution of United Papermakers and Paperworkers, A.F.L.-C.I.O. and particularly Article IX, Section 9, Subsections a and b provides contractual remedies and procedures for employees who allege a denial of rights in connection with their employment.

2. The plaintiffs have failed to exhaust the remedies and procedures provided them under the terms of the collective bargaining agreement pertaining to their employment and remedies provided by the Constitution of United Papermakers and Paperworkers A.F.L.-C.I.O. and specifically those provisions of said Constitution contained in Article IX, Section 9, Subsections a and b.

Wherefore, the defendant, Halifax Local No. 425, United Papermakers and Paperworkers, A.F.L.-C.I.O., having fully answered the Complaint of the plaintiffs prays the Court that the plaintiffs' action be dismissed against this defendant, that the cost of this action be taxed against the plaintiffs, and for such other relief as may appear to be just and proper.

Respectfully submitted,

James B. Ledford
623 E. Trade Street
Charlotte, North Carolina 28202

Bonner D. Sawyer
Hillsboro, North Carolina

Warren Woods
1735 K Street, N.W.
Washington, D. C. 20006

Attorneys for Defendant
Halifax Local No. 425,
United Papermakers and Paperworkers,
A.F.L.-C.I.O.

[Certificate of Service Omitted in Printing]

In The

UNITED STATES DISTRICT COURT

FOR THE

Eastern District of North Carolina

Wilson Division

[Title Omitted In Printing]

LETTER OF JUNE 12, 1970

June 12, 1970

Moody v. Albemarle Paper Company,

Civil Action No. 989

Honorable John D. Larkins
United States District Judge
Eastern District of North Carolina
Trenton, North Carolina

Dear Judge Larkins:

Counsel for the parties in the above action met in Roanoke Rapids, North Carolina, on June 4, 1970, for the purpose of stipulating certain facts which would make unnecessary (1) the introduction of the voluminous personnel records copied by plaintiffs and (2) the answer to defendant's supplemental interrogatory.

At the outset of the meeting it developed that the plaintiffs would not agree not to introduce the documents aforesaid if the stipulation were worked out. Since all counsel were present we did spend the day working out some

stipulated facts, in preparation for pretrial conference, but the basic problem remains unsolved.

Therefore, the defendant, Albemarle Paper Company, requests the Court to require plaintiffs to answer the supplemental interrogatory.

As you know, the assets of Albemarle Paper Company were sold on October 31, 1968. We understand the plaintiffs will move the Court within the next ten days to make the new corporation a party. The new corporation desires an opportunity to be heard on this motion.

One of the reasons assigned by Counsel for plaintiffs for refusing to agree not to introduce the voluminous documents is that they now think they may have a claim for monetary damages. The Court will note that no such damages were sought in the complaint and have not been mentioned during the first three and one-half years this case has been pending. I mention this at this time in order that the record will show that the defendants take the position that damages are not an issue in this case unless the Court permits an amendment to the complaint, an action which defendants would strenuously oppose at this late date.

Sincerely yours,
Francis V. Lowden, Jr.

cc: Robert Belton, Esq.
Julian R. Allsbrook, Jr., Esq.
Warren W. Woods, Esq.

In The

UNITED STATES DISTRICT COURT

FOR THE

Eastern District Of North Carolina

Wilson Division

No. 989—Civil

Joseph P. Moody, et al.,

Plaintiffs,

v.

Albemarle Paper Company, et al.,

Defendants.

OPINION AND ORDER

[Filed September 29, 1970]

LARKINS, District Judge:

This cause is now before the court upon the several motions below-listed in a civil action instituted by the Plaintiffs upon the alleged deprivation of their rights to equal employment opportunities pursuant to the provisions of Title VII of the Civil Rights Act of 1964; 42, United States Code Annotated, Section 2000, *et seq.*, jurisdiction in the court being grounded in the "Act" and pursuant to the provisions of Title 28, United States Code Annotated, Sectio· 1343.

The specific motions before the court for its determination presently are as follows:

(1) Plaintiffs' Motion to Add or Join the Albemarle Paper Company, the Hoerner Waldorf Corporation, the First Alpaco Corporation and the Ethyl Corporation as parties defendant pursuant to the provisions of Rules 19, 20 and 25(c), Federal Rules of Civil Procedures; and,

(2) Motion of Defendant Albemarle Paper Company, ("old" Albemarle), to Dismiss.

Issues have been joined by the parties Memoranda of Law in support and opposition to and of the motion to add or join parties and in support of the motion to dismiss, and opposition.

The court will first look to the merits of Plaintiffs' collective motions to add or join the parties above-named. Then a determination upon Defendant "old" Albemarle's Motion to Dismiss will be made.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action was originally instituted on August 25, 1966, with Albemarle Paper Company, a Virginia corporation, being named defendant in the original suit. Although at that time and until October 31, 1968, "old" Albemarle was a wholly owned subsidiary of Ethyl Corporation; neither Ethyl, Hoerner Waldorf, Alpaco, nor Albemarle Paper Company (a Delaware corporation—hereinafter referred to as "new" Albemarle) were named as parties defendant. Of course "new" Albemarle had not been formed at that time.

On October 31, 1968, pursuant to an agreement dated October 25, 1968, between Ethyl Corporation, Albemarle

Paper Company, Interstate Bag Company, Inc., a Virginia corporation, and Hoerner Waldorf Corporation, a Delaware corporation, "old" Albemarle transferred all of its property and assets, real, personal, tangible and intangible located in Roanoke Rapids, North Carolina, to Albemarle Paper Company, a Delaware corporation, i.e., "new" Albemarle. This was done by deed, bill of sale and related documents. On that same date, "old" Albemarle, by amendment to its charter, changed its name to First Alpaco Corporation. And Hoerner Waldorf paid to the account of First Alpaco Corporation a specified amount of money for the assets of "old" Albemarle, including those at Roanoke Rapids, North Carolina.

Since October 31, 1968, "old" Albemarle has had no control over any property or person working at its former mill in Roanoke Rapids, North Carolina. At no time did First Alpaco Corporation ever own any property or control any person working at the former mill of "old" Albemarle. On February 20, 1969, First Alpaco Corporation was merged into Ethyl Corporation. (Affidavit of Frederick P. Waren, Secretary of Ethyl Corporation).

"New" Albemarle, being the nominee of Hoerner Waldorf pursuant to the original agreement of October 25, 1968, presently has all management and control over the Roanoke Rapids facility in question—that being the situs of the alleged deprivation of Plaintiffs' rights.

In response to the plaintiffs' motions to add or join parties, the corporations therein named have relied primarily on this court's earlier ruling in this same case reported in 271 F. Supp. 27 (E.D.N.C., 1967). There this court, in allowing the motion of the international union to dismiss, held that where the international union was not named by plaintiffs in their complaint filed with the equal employment opportunity commission charging the denial of rights

to equal employment opportunities, the plaintiffs were not entitled to join the international union as a party defendant in a class action brought under the Civil Rights Act of 1964. This court said then that "the requirement that all defendants be named in the charge filed with the Commission goes to the competence of a district court to entertain the action. . . ."

But the decision there is distinguishable from the issue now directly in litigation. That determination establishing that the international must have been named in the charges before the E.E.O.C., was based on the fact that the local union (said union having been named before the E.E.O.C.) was autonomous in nature and was not an agent of the international union so as to permit the international union to be joined by plaintiffs as a party defendant. The court stated:

> "The contention that the local union is the agent of the international union is without merit, the records indicating that the local is merely affiliated with the international and enjoys an autonomous existence. This is insufficient to establish responsibility of the international for any alleged unlawful conduct on the part of the local." *Moody* v. *Albemarle*, 271 F. Supp. 27, 29 (E.D.N.C., 1967).

In other words, the international union was not, to any extent, viewed by the court as being the successor in interest to the local union—the local being a separate entity unto itself.

Further, a distinction between the issue there and that herein presented lies in the fact that at no time between the filing of charges by the plaintiffs before the E.E.O.C. and institution of the suit in this court had the stance or posture

of the international union changed. While, as per the corporations herein sought to be joined, two of these companies, First Alpaco Corporation and Albemarle Paper Company, a Delaware corporation, were not in existence at the time of filing of charges with the E.E.O.C. or institution of the suit in district court. Neither did Hoerner Waldorf Corporation have any interest in the charges or the suit. Now, Hoerner Waldorf, as the parent Corporation of "New" Albemarle surely would have an interest in protecting its "nominee" and wholly owned subsidiary from liability.

Only Ethyl Corporation, though it has engaged in some corporate shuffling involving liquidation of assets, stands now in substantially the same position as parent of Alpaco Corporation, as it did at the time of the filing of charges before the E.E.O.C. as the parent of "Old" Albemarle Paper Company.

However, even that stance is questionable in its similarity to the position of Ethyl Corporation at the time of the filing of charges before the E.E.O.C., because of the fact that on February 20, 1969, First Alpaco Corporation was merged into Ethyl Corporation.

The fact situation before the United States Court of Appeals for the Fourth Circuit in *Mickel* v. *South Carolina Employment Service,* 377 F.2d 239, (4th circ., 1967), was startlingly similar to those present in the earlier *Moody* ruling in that (1) there was a potential party-defendant in existence at the time of filing of charges before the E.E.O.C. which was not joined and (2) that party was not considered by the court to have been an agent of any party named in those charges before the E.E.O.C. In both instances the court determined that requisite jurisdiction had not been satisfied.

There is no doubt that conciliation is a jurisdictional prerequisite to institution of a civil action under the Civil

Rights Act of 1964 dealing with equal employment opportunities, and further that an action so instituted without complying with such jurisdictional prerequisite must be dismissed. Civil Rights Act of 1964 § 706(a,d,e), Title 42 U.S.C.A., § 2000e-5(a,d,e). *Mickel* v. *South Carolina Emp. Serv.*, supra.

However, the court is of the considered opinion that when an aggrieved party has brought charges against a named respondent before the E.E.O.C., thusly complying with jurisdictional prerequisites, and has instituted suit in the district court against that same party, he should be allowed to pursue his alleged claims for relief against the party defendant even though his course of pursuit may lead him through that dark and dismal forest known to all as the corporate reshuffle. And the court is impressed with the argument of counsel for the plaintiffs that if the decisions of *Mickel* and *Moody I* are considered by the court to be applicable to the facts at bar then "all employers charged before EEOC with violations of Title VII could easily escape liability by transferring its interest subsequent to filing of a Title VII suit in Federal Court." The court further agrees that, "If the court were then to find that the original employer-defendant had been or is presently guilty of a violation of the Title VII, an aggrieved party would have an empty victory because injunctive relief would not be appropriate and the original defendant would not be able to respond in damages because its assets had been transferred."

". . . Moreover, to require plaintiffs on the facts in this case to now go before EEOC as to these proposed defendants would subject plaintiffs to a possible never ending treadmill."

The court sees as one of its duties, the avoidance of a multiplicity of suits. And the court finds that clearly it was

not the intent of Congress, in passing Title VII of the Civil Rights Act of 1964, to create multiplicity or loophole.

Rule 25(c), Federal Rules of Civil Procedure provides in part as follows:

> "In case of any transfer of interest the action may be continued by or against the original party unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party."

The motion for joinder of parties having been made, and it appearing to the court that any or all of the parties sought to be added or joined have or could have the burden of liability in the event of a determination of liability being made, the court finds that Albemarle Paper Company, a Delaware corporation, the First Alpaco Corporation, Ethyl Corporation and Hoerner Waldorf Corporation should be joined as parties-defendant and the motion of plaintiffs should be allowed.

It was the intent of Congress, as evidenced by Section 706 (a,d,e) of Title VII, the Civil Rights Act of 1964, clearly, that all possible parties-defendant in Federal court be included as respondents to charges filed with the E.E.O.C. The obvious purpose therein was to subject all original claims to the possibility of conciliation at the administrative level before entrance into suit in the district court. This purpose is effectuated by the requirement that administrative remedies be exhausted by plaintiffs as to all defendants which were available to them at the time of filing of charges with E.E.O.C.

But the purpose of prior conciliation is not enhanced by requiring that plaintiffs exhaust administrative remedies as to new potential parties-defendant where those parties

are either substituted for original parties as successors in interest or are newly formed (at a time subsequent to the filing of charges with the E.E.O.C.). Rule 25(c) was specifically created to resolve this situation. Using the rule does not expand any federal jurisdiction, but only makes right what has the odorous property of being an unfair procedural obstacle.

No longer must we contend with the procedural traps of the Common Law, for we live in an enlightened age of the Federal Rules. And until finer tools are created, this court will utilize these Rules as they were intended to so be used.

Defendant "old" Albemarle Paper Company has moved the court to dismiss the case both as to it, the present defendant, and as to all those whom the plaintiffs have sought to join as Defendants essentially on the following grounds:

> That it, the Defendant "old" Albemarle is no longer in existence, all its interests in the plant and facility in Roanoke Rapids, North Carolina having been transferred out to other named parties in the motion to add or join, and no money damages specifically having been prayed for by plaintiffs, then the injunctive relief sought by plaintiffs not being possible as against a non-existent defendant, the whole matter should be dropped.

Defendant "old" Albemarle further asserts several reasons why the action should be dismissed which involve the merits of the dispute here in question, and of course, as we are not yet to the merits of this litigation, much to the chagrin of the court, these contentions can not be considered upon the motion to dismiss.

Rule 54(c) of the Federal Rules of Civil Procedure provides in part: "except as to a party against whom a judg-

ment is entered by default every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." The possibility of an award of money damages upon a determination of liability is still with us. It is not yet the proper time to drop the plaintiffs' claims, which are, at least, litigable.

However, in view of the fact that "old" Albemarle is no longer in existence, the court having found that all the interests originally held by it have been transferred out to the parties named in the motion to add or join; and further in view of the fact that usage of the terms "old" and "new" Albemarle is becoming tiresome, and Rule 25(c) providing that in the case of any transfer of interest the court may direct that the person or persons to whom the interests were transferred be substituted in the action for the original party, the court is wont to allow the motion to dismiss as to "old" Albemarle. But, in the interest of justice in the case at bar, the court finds that the more proper step to be taken is to keep the original party defendant in the litigation, even though it has now been dissolved, and allow the motion to add or join parties as to all those parties sought to be joined.

The court having considered the excellent Brief Amicus Curiae of the Equal Employment Opportunity Commission filed in support of plaintiffs' position with respect to their motion along with responsive briefs thereto, the court finds that the "Public Policy" sought to be served by Title VII is best served by taking the abovestated action.

Order

Now Therefore, in accordance with the foregoing, it is Ordered, that the Motion to Add or Join the Albemarle Paper Company, a Delaware corporation, the Hoerner Wal-

dorf Corporation, the First Alpaco Corporation, and the Ethyl Corporation be and the same is hereby Allowed, and,

Further Ordered, that the Motion to Dismiss on the part of Defendant Albemarle Paper Company, a Virginia corporation, as to it and all parties herein joined as parties-defendant, be and the same is hereby, Denied; and,

Further Ordered, that the Clerk shall serve copies of this Opinion and Order upon all Counsel of Record.

Let this Order be entered forthwith.

/s/ John D. Larkins, Jr.
John D. Larkins, Jr.
United States District Judge

Trenton, North Carolina
September 28, 1970

In The
UNITED STATES DISTRICT COURT
FOR THE
Eastern District of North Carolina
Wilson Division

[Title Omitted In Printing]

AMENDED ORDER

[Filed October 15, 1970]

Larkins, District Judge:

It Appearing To The Court, that certain wording in the Opinion and Order in this matter of the court dated September 28, 1970, may be or is ambiguous or misleading;

Now Therefore, It Is Ordered, that Line 17, Paragraph 3 of Page 5 of the Opinion and Order, which has heretofore read:

> "There is no doubt that conciliation is a jurisdic- . . ."

be amended to read:

> "There is no doubt that submitting to the possibility of conciliation is a jurisdic-";

and,

Further Ordered, that the Clerk shall serve copies of this Order upon All Counsel of Record.

Let this Order be entered forthwith.

/s/ John D. Larkins, Jr.
John D. Larkins, Jr.
United States District Judge

Trenton, North Carolina
October 14, 1970

In The

UNITED STATES DISTRICT COURT

FOR THE

Eastern District of North Carolina

Wilson Division

(Civil Action No. 989)

[Title Omitted In Printing]

ANSWER AND CROSS CLAIM OF ETHYL CORPORATION

[Filed December 28, 1970]

[Answer Omitted In Printing]

Cross-Claim Against Defendant, Hoerner Waldorf Corporation And Albemarle Paper Company, (Delaware)

1. Prior to July 2, 1965, and until October 31, 1968, the Albemarle Paper Company, a Virginia corporation, was a wholly owned subsidiary of Defendant, Ethyl Corporation.

2. By agreement dated October 25, 1968, between Defendant Ethyl Corporation, Defendant Hoerner-Waldorf Corporation, and others, certain assets of Albemarle Paper Company, a Virginia corporation, including the mill at Roanoke Rapids, North Carolina, were transferred to the nominee of Defendant Hoerner-Waldorf Corporation. This agreement provided in pertinent part that Defendant Hoerner-Waldorf Corporation would assume and pay "all liabilities of Albemarle and Interstate resulting from their respective operations in the ordinary course of their business prior to the closing date." (Section 1.03(b)). This agreement further provided that Defendant Hoerner-Wal-

dorf Corporation would indemnify and hold harmless Defendant Ethyl Corporation "from and against any claim or expense from or in connection with liabilities or obligations assumed by Hoerner-Waldorf under Section 1.03 . . . and all guarantees or contingent liabilities or obligations of Sellers with regard to the foregoing." (Section 1.05). In Exhibit I to the agreement of October 25, 1968, Defendant Ethyl Corporation expressly disclosed to Defendant Hoerner-Waldorf Corporation the existence of this lawsuit. Pursuant to this agreement, Hoerner-Waldorf Corporation, a Delaware corporation, delivered at the closing of the sale and purchase of assets a General Assumption of Obligations and Liabilities dated October 31, 1968, by which liabilities and obligations of Albemarle Paper Company, a Virginia corporation, were expressly assumed and Ethyl Corporation and Albemarle Paper Company, a Virginia corporation, were indemnified against any future claim or expense arising from the liabilities and obligations so assumed.

3. On September 29, 1970, the Court added the Ethyl Corporation as a Defendant in this action. Defendant Ethyl Corporation has requested the Defendant Hoerner-Waldorf Corporation to defend this action on behalf of Defendant Ethyl Corporation and to hold it harmless against any claim, expense, judgment or liability of or against Defendant Ethyl Corporation or Albemarle Paper Company, a Virginia corporation, arising out of this action or the defense thereof.

4. Defendants Hoerner-Waldorf Corporation and Albemarle Paper Company, a Deleware corporation, have refused the request of Defendant Ethyl Corporation and by so doing Defendants Hoerner-Waldorf Corporation and Albemarle Paper Company, a Delaware corporation, have

breached the express terms of the agreements previously mentioned herein.

Wherefore, the Defendant Ethyl Corporation demands judgment against the Defendant Hoerner-Waldorf Corporation and/or Albemarle Paper Company, a Delaware corporation, for any sum which may be recovered herein by the Plaintiffs against this Defendant and/or its costs and reasonable attorneys' fees.

Ethyl Corporation

By .....
Its Counsel

Charles F. Blanchard, Esq.
Yarborough, Blanchard, Tucker & Yarborough
Wachovia Bank Building
Raleigh, North Carolina 27602

Counsel for Defendant,
Ethyl Corporation

Dated: December 28, 1970

[Certificate of Service Omitted in Printing]

In The
UNITED STATES DISTRICT COURT
FOR THE
Eastern District Of North Carolina
Wilson Division

[Title Omitted In Printing]

ORDER

[Filed May 28, 1971]

This cause was heard by the undersigned on May 17, 1971, on the motion of defendant Albemarle Paper Company to compel responsive answers to its supplemental interrogatory as follows:

> "List the specific names of each employee or former employee whose personnel record or records in any way establishes or tends to establish any discrimination by Albemarle Paper Company in its employment practices and explain how such record or records show discrimination giving the specific dates and instances."

The Court has considered the pleadings and memoranda and heard arguments of counsel for all parties and is of the opinion that defendant's motion to compel responsive answers to the supplemental interrogatory should be granted.

It Is Therefore, Ordered, Adjudged And Decreed:

That the Plaintiffs answer the supplemental interrogatory in a responsive, complete and specific manner no later than June 25, 1971. The Clerk will mail conformed copies of this order to all interested counsel.

This 28th day of May, 1971.

/s/ F. T. Dupree, Jr.
Judge, United States District Court

In The

UNITED STATES DISTRICT COURT

FOR THE

Eastern District of North Carolina

Wilson Division

[Title Omitted In Printing]

(Civil Action No. 989)

ORDER

[Filed June 15, 1971]

At a hearing held on May 17, 1971, the motion of the defendant, Albemarle Paper Company, that plaintiffs be required to answer a supplemental interrogatory served on plaintiffs on April 24, 1969, was allowed, and at the request of the court counsel for said defendant submitted an order directing plaintiffs to answer the interrogatory which order was signed and entered herein under date of May 28, 1971. Thereafter a communication was received from counsel for plaintiffs objecting to the form of this order, and the court thereupon ordered further hearing on the matter to be held on June 10, 1971.

At this second hearing which was attended by all interested counsel motion of Albemarle Paper Company to compel answers to its supplemental interrogatory was reconsidered, and also considered were the matters of defining the class in this class action; the question of whether or not damages will be recoverable; and the matter of notice to be

given to the members of the class. The court thereupon made the following rulings and it is

ORDERED:

1. Plaintiffs are directed to answer the supplemental interrogatory of Albemarle Paper Company in a responsive and complete manner, and more specifically plaintiffs are directed to indicate in their answers where the records presently in possession of plaintiffs show that each member of the class represented by plaintiffs, who is claiming damages of the defendants by reason of the alleged racially discriminatory employment practices of the defendants was denied because of race the opportunity to fill a vacancy in a job for which the member was qualified on and after July 2, 1965; a statement as to each such member of the class as to how he was personally and specifically discriminated against; and the amount of damages being claimed.

2. The time in which plaintiffs may answer the supplemental interrogatory is extended to and including July 10, 1971.

3. Final ruling as to whether any member of the class may recover damages in this action is reserved.

4. The court designates the class which plaintiffs represent as follows:

(a) All Negroes employed at the Roanoke Rapids plant of Albemarle Paper Company as of June 30, 1967.

(b) All Negroes employed at said plant after June 30, 1967, except those whose initial permanent positions were not job classifications limited to or predominantly staffed by Negroes.

(c) All Negroes who may hereafter apply for or be employed at said Roanoke Rapids plant who may be affected by the alleged racially discriminatory employment practices of the defendants.

5. Counsel are directed to submit suggested forms of notice to be directed to the members of the class under the provisions of Rule 23(c)(2) on or before June 25, 1971.

6. The trial date for the action, July 26, 1971, at 10 o'clock a.m. in Courtroom No. 1, Federal Building, Raleigh, North Carolina, remains unchanged.

7. Except as herein modified the order of May 28, 1971, remains in full force and effect, and the directives and provisions of the court's memorandum of the conference on May 17, 1971, are by this reference incorporated herein.

This June 15, 1971.

/s/ F. T. Dupree, Jr.
United States District Judge

In The

UNITED STATES DISTRICT COURT

FOR THE

Eastern District of North Carolina

Wilson Division

[Title Omitted In Printing]

(Civil Action No. 989)

ORDER

[Filed June 18, 1971]

In this case, as in all class actions, there exists the potential of abuse of the procedure, intentional and inadvertent, unless procedures are devised and employed to anticipate abuse. The judges of this court have under consideration an amendment to the local rules to guard against the potential abuses of the class action processes. Meanwhile, in order to avoid misunderstanding, the court on its own motion makes the following ruling with respect to the future conduct of counsel in this case, and it is

ORDERED:

All parties hereto and their counsel are forbidden directly or indirectly, orally or in writing, to communicate concerning this action with any potential or actual class member not a formal party to the action without the consent and approval of the proposed communication by order of this court. Any such proposed communication shall be presented

to this court in writing with a designation of or description of all addressees and with a motion and proposed order for prior approval by this court of the proposed communication. The communications forbidden include, but are not limited to, (a) solicitation directly or indirectly of legal representation of potential and actual class members who are not formal parties to the class action; (b) solicitation of fees and expenses and agreements to pay fees and expenses from potential and actual class members who are not formal parties to the class action; (c) solicitation by formal parties to the class action of requests by class members to opt out of the action under subparagraph (b)(3) of Rule 23; and (d) communications from counsel or a party which may tend to misrepresent the status, purposes and effects of this class action, and of any actual or potential orders herein which may create impressions tending, without cause, to reflect adversely on any party, the counsel, the courts, or the administration of justice. The obligations and prohibitions of this order are not exclusive, and all other ethical, legal and equitable obligations remain unaffected by the order. Neither does the order forbid communications between any attorney and his client, or a prospective client, who has on the initiative of the client or prospective client consulted with, employed or proposed to employ the attorney.

This June 18, 1971.

/s/ F. T. Dupree, Jr.
United States District Judge

In The

UNITED STATES DISTRICT COURT

FOR THE

Eastern District of North Carolina

Wilson Division

[Title Omitted In Printing]

(Civil Action No. 989)

ORDER

[Filed July 8, 1971]

Upon Consideration of the suggested forms of notice submitted to the court by counsel pursuant to the order of June 15, 1971, and other matters presently requiring the court's attention, it is now

ORDERED:

1. Notice

(a) The notice to be given to the class affected by this action shall be in the form attached hereto and marked Exhibit A.

(b) A copy of the notice shall be mailed by first class mail in the official envelopes of the Clerk of this court to each Negro employed at the Roanoke Rapids plant of Albemarle Paper Company as of June 30, 1967, and to all Negroes employed at said plant after that date except those whose initial permanent positions were not job classifications limited to or predominantly staffed by Negroes.

(c) The notice shall be published in the Daily Herald, a newspaper published in Roanoke Rapids, North Carolina, in its editions of July 8, July 12, July 15 and July 19, 1971.

(d) Albemarle Paper Company shall post a copy of the notice on each of its bulletin boards in its Roanoke Rapids plant and keep the same posted for thirty days from the date of this order.

(e) The cost of mailing and publishing the notices shall be paid by the plaintiffs but shall be taxable as costs against the losing party in the case.

(f) Notwithstanding the provisions of the notice requiring filing of proofs of claim by July 22, 1971, the court will on or before August 6, 1971, entertain a motion by any interested member of the class for an extension of time in which to file claim upon a showing that the failure to file the claim timely was due to circumstances beyond the class member's control.

2. Damages

(a) In view of the ruling of the Court of Appeals for the Fourth Circuit in the case of *Robinson* v. *Lorillard Corporation,* No. 15,098, and related cases decided July 1, 1971, this court now rules that damages may be recovered in this action if the plaintiffs prevail.

(b) It is hoped that the damage claims, if found to be allowable, may be heard and determined at the trial, but if such claims become too numerous or complicated, this phase of the case may be referred to a special master.

3. Attorney's Fees

(a) In the event plaintiffs prevail, it would appear from the *Robinson* case cited above that notwithstanding the language of 42 U.S.C. § 2000e-5(k), plaintiffs will be en-

titled to counsel fees as a matter of right absent a showing of such special circumstances as would render an award of counsel fees unjust. Counsel are directed to brief this question and be prepared to argue the same at the time of the trial.

(b) In the event attorney's fees are claimed, counsel for plaintiffs are directed to file with the court at the time of the trial upon the court's request the details of any fee arrangement which they have with plaintiffs or anyone acting on their behalf, an itemized statement of their time and expenses incurred and the amount, if any, received on account to date and the source of same.

4. Stipulations

(a) Counsel are directed to file with the court on or before July 16, 1971, the stipulation of facts and a pretrial order incorporating all matters referred to in paragraph 7 of the court's memorandum of the conference of May 17, 1971.

5. Trial Briefs

(a) Counsel are directed to file with the court trial briefs covering all anticipated questions of substantive, procedural and evidence law on or before July 16, 1971.

This July 6, 1971.

/s/ F. T. Dupree, Jr.
United States District Judge

In The

UNITED STATES DISTRICT COURT

FOR THE

Eastern District of North Carolina

Wilson Division

[Title Omitted in Printing]

(Civil Action No. 989)

NOTICE OF PENDENCY OF CLASS ACTION

[Filed July 8, 1971]

(Exhibit A to Order of July 8, 1971)

To: All Black Employees Of Albemarle Paper Company At Its Roanoke Rapids Plant In Roanoke Rapids, North Carolina, And All Members Of The Class As Herein Defined:

Notice Is Hereby Given That:

On August 25, 1966, a civil action was filed in the United States District Court for the Eastern District of North Carolina by Joseph P. Moody, Theodore Daniels, Henry Hill and Arthur Mitchell as plaintiffs seeking relief under Title VII of the Civil Rights Act of 1964. This law prohibits discrimination in employment on the ground of race, color, religion, sex or national origin. The defendants in the case are Albemarle Paper Company, a Virginia corporation, Albemarle Paper Company, a Delaware corporation,

Ethyl Corporation, Hoerner-Waldorf and Halifax Local No. 425, United Papermakers and Paperworkers, AFL-CIO.

On June 15, 1971, the court entered an order allowing the action to be prosecuted as a class action under Rule 23 of the Federal Rules of Civil Procedure, and the class was defined as (1) all Negroes employed at the Roanoke Rapids plant of Albemarle Paper Company as of June 30, 1967; (2) all Negroes employed at said plant after June 30, 1967, except those whose initial permanent positions were not job classifications limited to or predominantly staffed by Negroes; and (3) all Negroes who may hereafter apply for or be employed at said Roanoke Rapids plant who may be affected by the alleged racially discriminatory employment practices of the defendants.

Plaintiffs' complaint seeks relief from alleged racially discriminatory practices and policies against black employees and potential black employees who are, have been or may be employed at the Roanoke Rapids plant of Albemarle Paper Company; relief in the form of back pay for any black employees who may be found to have been discriminated against because of race since July 2, 1965; an injunction against the use of or reliance on any tests and/or educational requirements not shown to be lawful in determining qualifications for the employment and promotions of black employees at the Roanoke Rapids plant; and to have the court require the institution of a plant seniority system for filling job vacancies.

The defendants have denied the material allegations of plaintiffs' complaint and deny all liability.

This notice in no way indicates any view of the court as to the merits of the action but is merely to advise you of the pendency of the suit and of your rights under it.

The case is set for trial in Courtroom No. 1, United States Courthouse, 310 New Bern Avenue, Raleigh, North Carolina, beginning at 10 o'clock a.m., July 26, 1971.

Your rights may be affected by this action, and if you believe that you have been discriminated against by any of the defendants in employment opportunities at Albemarle Paper Company on account of race and have a lawful claim against any defendant by reason thereof:

(a) the court will exclude you from the class represented by the attorneys for the plaintiffs if you request exclusion in writing addressed to the Clerk of the United States District Court, Eastern District of North Carolina, P. O. Box 25670, Raleigh, North Carolina, 27611, and postmarked not later than July 22, 1971. If you elect to be excluded from the class, you will be free to pursue on your own behalf whatever legal rights you may have.

(b) if you do not request exclusion from the class by July 22, 1971, you will be included in such class and any judgment, whether favorable or not, including any judgment approving any settlement of this action, will be binding upon you.

(c) if you do not request exclusion from the class but prefer in connection with your individual claim to be represented by your own attorney rather than by the attorneys for the plaintiffs herein, you may enter an appearance through your attorney but not later than July 22, 1971.

(d) in the event you are claiming damages of any of the defendants by reason of any alleged racially discriminatory practice, you must file your written proof of claim under oath with the Clerk of the U. S. Dis-

trict Court at the address shown herein stating the details of such alleged discrimination and the amount of damages you are claiming. Such claim must be mailed not later than July 22, 1971, or it will be forever barred.

If you have any questions concerning this notice, you may write or call the Office of the Clerk of the United States District Court, P. O. Box 25670, Raleigh, North Carolina, 27611, Telephone No. (919) 755-4370.

This July 6, 1971.

/s/ F. T. Dupree, Jr.
United States District Judge

In The

UNITED STATES DISTRICT COURT

FOR THE

Eastern District of North Carolina

Wilson Division

[Title Omitted in Printing]

(Civil Action No. 989)

MOTION FOR LEAVE OF COUNSEL FOR PLAINTIFFS TO COMMUNICATE WITH CLASS MEMBERS FOR PURPOSES OF TRIAL PREPARATION

[Filed July 14, 1971]

Plaintiffs move the Court, pursuant to its order entered on June 18, 1971, for entry of an order granting counsel for plaintiffs leave to contact, communicate, and discuss with actual and potential members of the class, for the purpose of adequately preparing plaintiffs' case for trial. Communication with actual and potential class members is necessary to enable counsel for plaintiffs to discuss with class members the nature of their testimony at trial; to obtain and review testimony which may be helpful in preparing plaintiffs' rebuttal testimony; to explain and discuss on a continuing basis the status of the proceedings; to assist counsel for plaintiffs in reviewing evidence which may be helpful in the cross-examination of the defendants' witnesses; and to discuss back pay claims.

As grounds for this motion, plaintiffs show the Court as follows:

1. On August 25, 1966, the complaint was filed in the instant case under Title VII of the Civil Rights Act of 1964 and the plaintiffs designated the action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

2. The then defendants challenged the right of plaintiffs to prosecute this action as a class action. After several hearings in the matter, the Court in its July 6, 1967 Memorandum, Opinion and Order allowed the class action.

3. On or about September 24, 1968 plaintiffs, pursuant to the September 18, 1968 Order of the Court, submitted their statement of the designation of class.

4. Since the institution of this action, counsel for the plaintiffs have met periodically with the named plaintiffs in this case as well as other black employees of Albemarle Paper Company. These meetings have taken place in the office of counsel for the plaintiffs, in Raleigh, North Carolina and in Roanoke Rapids, North Carolina. The purpose of these meetings has been to advise plaintiffs and other black employees of Albemarle Paper Company of the progress and status of the case and to obtain information which might be useful in the presentation of their claims. No attempt was made by counsel to record the names and addresses of all the black employees who attended the various meetings. Plaintiffs will show to the Court that in addition to the named plaintiffs and those persons listed below, Herman Johnson, Carlton Belfield, John Jarrell, Jake Alston, Joe Bradley, Joe Rook, Mack Johnson and Marvin Harrison have attended meetings on occasion.

5. In addition to the named plaintiffs, the following employees or former employees have formally retained counsel for the plaintiffs to represent them in this matter: Arthur

T. Kearney, Route 1, Box 127, Roanoke Rapids, North Carolina; Eulis K. Lawson, 124 Matthews, Roanoke Rapids, North Carolina; William Townes, Route 2, Box 216, Roanoke Rapids, North Carolina; James Mallory, 109 Prospect Street, Weldon, North Carolina; Frank Mayo, Route 2, Box 381-M, Roanoke Rapids, North Carolina; W. H. Mason, Street Route, Box 87B, Roanoke Rapids, North Carolina; E. R. Hardy, 334 E. Littleton Road, Roanoke Rapids, North Carolina; Philmore Taylor, 1940-A Carter Street, Roanoke Rapids, North Carolina; Lonnie Lee, Box 132, Gaston, North Carolina; Julius Love, Valentine, Virginia; Moses Vincent, Garysburg, North Carolina; M. C. Boone, Post Office Box 38, Garysburg, North Carolina; James Alfred Jones, 118 Lincoln Avenue, Roanoke Rapids, North Carolina; Ernest Garner, 1929 Glover Street, Roanoke Rapids, North Carolina; Ernest Hawkins, 1901 Glover Street, Roanoke Rapids, North Carolina; Johnnie E. Roberts, Post Office Box 453, Gaston, North Carolina; Clarence High, Route 2, Box 381J, Roanoke Rapids, North Carolina; Julian Peebles, Route 2, Box 279, Halifax, North Carolina; Marvin Harrison, 154 Carver Street, Roanoke Rapids, North Carolina; Charlie D. King, Star Route, Box 145, Emporia, Virginia; Eugene Neville, 130 Lincoln Avenue, Roanoke Rapids, North Carolina; Willie Ashe, Route 2, Box 278, Littleton, North Carolina; W. M. Martin, Route 1, Box 431, Roanoke Rapids, North Carolina; Perry M. Cowan, 524 First Street, Weldon, North Carolina; William Garris, Route 1, Box 249 Roanoke Rapids, North Carolina; Jesse Mallory, Garysburg, North Carolina; Alphonso Owens, Roanoke Rapids, North Carolina; William T. Vassor, Garysburg, North Carolina; A. N. Johnson, Route 1, Box 213, Jackson, North Carolina.

6. Counsel for the plaintiffs have assumed that since the initiation of this action they have represented other black employees of Albemarle Paper Company in addition to the named plaintiffs and this is particularly true since the order of the Court of August 6, 1967. Furthermore, it is apparent that many of the black employees of Albemarle Paper Company have relied on the representation of counsel for the plaintiffs to protect their interest in this action because from time to time counsel for the plaintiffs have received communications from black employees of Albemarle other than the named plaintiffs to discuss the status of the case and/or to request advice from counsel on what action should or should not be taken with respect to their status as employees of Albemarle Paper Company.

7. Plaintiffs recognize that an individual has a right to select his own counsel to prosecute any of his claims and that his choice of counsel should be unfettered. Plaintiffs submit that the willingness of a number of the black employees of Albemarle Paper Company to rely on and consult with present counsel in assisting in the preparation of this claim establishes a prima facie showing that the representation of present counsel is adequate.

8. The notice of July 6, 1971 to some class members provides in one part that if a member does not indicate to the Court by July 22, 1971 that he chooses not be represented by present counsel, then any judgment favorable or unfavorable will be binding upon him. The notice in another part requires members to submit a statement to the Court in writing, under oath, of the amount of back pay he has suffered if unlawful discrimination is found and provides that his claim for back pay, if not noted by July 22, 1971, will be forever barred. Counsel cannot affectively represent the interest of a class member if he is prohibited

from discussing all relief to which that member is entitled if a violation is established. Plaintiffs submit that the terms of the present order affectively prohibits counsel for plaintiffs from discussing a member's or a potential member's claim freely and advising him of all relief to which he may be entitled.

9. Plaintiffs submit that the ruling of the Court limiting communication between counsel and plaintiffs and actual and potential members of their class, particularly at this stage of the proceedings, raises serious questions under the First Amendment to the Constitution of the United States guaranteeing the right to free speech and association and decision of the Supreme Court of the United States in *NAACP* v. *Button*, 371 U.S. 415 (1963). See also *United Transportation Union, Petitioner* v. *The State Board of Michigan*, 39 U.S.L.W. 4428 (1970) and *Brotherhood of Railroad Trainmen* v. *Virginia State Bar*, 377 U.S. 1 (1964).

Since the mailing of the notice by the Court, black employees of Albemarle Paper Company have contacted the named members in this action requesting advice and explanation of the notice and requesting that Joe P. Moody contact present counsel for advice. The only advice allowable under the present orders is that contact be made with the Clerk of the Court. Counsel for plaintiffs have so advised the named plaintiffs that this could be the only extent to which they could discuss the present status of the case.

Attached herewith in support of this motion is the Affidavit of Joe P. Moody.

Wherefore, for the reasons stated above, plaintiffs respectfully request the Court to enter an order granting

leave to counsel for plaintiffs to communicate with actual and potential class members for the purposes stated above.

This 13th day of July, 1971.

Respectfully submitted,

.....

Robert Belton

J. LeVonne Chambers
Chambers, Stein, Ferguson & Lanning
237 West Trade Street
Charlotte, North Carolina

T. T. Clayton
307 West Franklin Street
Warrenton, North Carolina

Conrad O. Pearson
203½ East Chapel Hill Street
Durham, North Carolina

Jack Greenberg
William Robinson
10 Columbus Circle
New York, New York 10019

Attorneys for Plaintiffs

State Of North Carolina)
Mecklenburg County) Affidavit

Joe P. Moody first being duly sworn deposes and says:

1. My name is Joe P. Moody and I reside at Route 1 Box 128, Roanoke Rapids, North Carolina. I am a plaintiff in the case styled *Joe P. Moody, et al.*, v. *Albemarle Paper Company, et al.*, C.A. No. 989, pending in the United States District Court for the Eastern District of North Carolina.

2. After receiving notice from the Clerk for the United States District Court advising of the pendency of the lawsuit, I was approached by several black persons who were employees or former employees of Albemarle Paper Company requesting some explanation of the notice.

3. I am of the opinion that many of the persons who have received notices from the Clerk do not completely understand the content of the notice nor what they are obligated to do pursuant to the Notice.

The foregoing has been read to me and is fully understood by me to be accurate and true.

/s/ Joe P. Moody
Joe P. Moody

[Jurat Omitted in Printing]

In The

UNITED STATES DISTRICT COURT

FOR THE

Eastern District of North Carolina

Wilson Division

[Title Omitted in Printing]

(Civil Action No. 989)

MOTION FOR CLARIFICATION

[Filed July 14, 1971]

Plaintiffs move the Court, by their undersigned attorney, for clarification of the Notice, dated July 6, 1971, directed to all black employees of Albemarle Paper Company at its Roanoke Rapids plant Roanoke Rapids, North Carolina and all members of the class as designated in the Order of June 15, 1971. The basis for this motion is as follows:

1. Paragraph (b) on page 2 of the Notice provides, "if you do not request exclusion from the class by July 22, 1971, you will be included in such class and any judgment, whether favorable or not, including any judgment approving any settlement of the action, will be binding upon you." Paragraph (d) on page 2 of the Notice provides, "in the event you are claiming damages of any of the defendants by reason of any alleged racially discriminatory practice, you must file your written proof of claim under

oath with the Clerk of the U.S. District Court at the address shown herein stating the details of such alleged discrimination and the amount of damages you are claiming. Such claim must be mailed not later than July 22, 1971, or it will be forever barred."

2. According to paragraph (b) referred to above, failure of a class member to request exclusion results in a binding judgment on that member whether favorable or unfavorable. Further, failure to request exclusion means that present counsel must represent that member in the trial of this matter. On the other hand, failure to request exclusion and failure to file proof of damages under oath by July 22, 1971, results in the barring of the damage claim of that member notwithstanding the fact that he is represented by counsel and counsel have been ordered not to discuss the case with members who are not formal parties to the action unless permission is received from the Court. Plaintiffs submit that this posture of the case seriously diminishes the opportunity for counsel to advise class members.

3. Paragraph (b) speaks in terms of "judgment" and "settlement." We submit that reference to judgment in paragraph (b) in the Notice encompasses all the relief to which the class members may be entitled after trial or any settlement, including damages. Plaintiffs contend that back pay is not a separate and distinct kind of relief which should not be included in the judgment; the effect of paragraph (b) is to make this distinction. See *Robinson* v. *Lorillard*, Slip Op., pp. 25-28, No. 15, 098 (4th Cir. July 1, 1971).

4. Plaintiffs submit that the law is unclear on the method by which back pay, if allowed, should be computed. Plaintiffs have submitted a suggested method of computation in

their Further Answers to Interrogatories filed on July 10, 1971. While plaintiffs may urge the court to adopt the method of computation as suggested in Further Answers, the court has not yet decided that this will be the method of computation. This raises a question of how actual or potential members of the class are to compute the damages by July 22, 1971.

5. The Notice provides that if any of the actual or potential class members have questions concerning the Notice, then he may write or call the office of the clerk of the U.S. District Court. Is the clerk authorized to advise those persons who may call how their damages are to be computed when the court itself has not made such a determination? If the clerk is not authorized to so advise, is the clerk authorized to refer him to, or appoint, an attorney to assist him in computing his back pay claim if the member questions the adequacy of present counsel? See 706(e) of Title VII.

6. Assuming that a persons does not contact the clerk of Court plaintiffs' counsel, under the Notice, will represent him, but is plaintiffs' counsel barred from making a claim for damages for back pay on the part of that person after July 22, 1971?

7. Counsel for the plaintiffs were aided in responding to the requirement that plaintiffs specify the amount of back pay that each member claims to have suffered by records copied pursuant to an Order of the court; these records were incomplete. These records have not been made available to actual or potential members of the class. To require the class members to specify the amount of damages without the aid of such records and more particularly without the aid of an attorney, is to require class members to do without necessary assistance.

Wherefore, plaintiffs respectfully pray the Court to clarify its Notice of July 6, 1971.

This 13th day of July, 1971.

Respectfully submitted,

....

Robert Belton

J. LeVonne Chambers
Chambers, Stein, Ferguson & Lanning
237 West Trade Street
Charlotte, North Carolina

T. T. Clayton
307 West Franklin Street
Warrenton, North Carolina

Conrad O. Pearson
203½ East Chapel Hill Street
Durham, North Carolina

Jack Greenberg
William Robinson
10 Columbus Circle
New York, New York 10019

Attorneys for Plaintiffs

In The
UNITED STATES DISTRICT COURT
FOR THE
Eastern District of North Carolina
[Title Omitted In Printing]
(Civil Action No. 989)

MOTION FOR SEVERANCE AND THE APPOINTMENT OF A MASTER

[Filed July 14, 1971]

Plaintiffs move, by the undersign attorney, for entry of an order by the court that the issue of the determination of the amount of back pay be the subject of a special proceeding separate and apart from the determination of the issue of liability. Plaintiffs further move the court to refer matter of the determination of the amount of back pay to a special master, pursuant to Rule 53 of the Federal Rules of Civil Procedure, should the court find that the plaintiffs or any of their class have suffered an economic loss as a result of the complanied of racially discriminatory employment practices by any or all of the defendants.

As grounds for this Motion, Plaintiffs show the court as follows:

1. The severance of the determination of the amount of back pay from the determination of liability would expedite the final determination of this matter. The court may make a finding on evidence introduced to establish a violation of Title VII, that plaintiffs have not made out their claim and therefore the Court would not have to reach the issue of back pay or determination of the amount.

2. Plaintiffs submit that the determination of the amount of back pay, should the Court decide that back pay is ap-

propriate, will involve the examination of employees' records, qualifications of employees and mathematical computation of claims. These are matters which should be referred to a special master.

3. In this connection we call the Court's attention to *Robinson* v. *Lorillard,* No. 15,098 (4th Cir. July 1, 1971) and *Sprogis* v. *United Air Lines,* ..... F.2d ....., 3 EPD Para. 8239 (No. 18481, June 16, 1971).

This 13th day of July 1971.

Respectfully submitted,

Robert Belton
J. LeVonne Chambers
Chambers, Stein, Ferguson & Lanning
237 West Trade Street
Charlotte, North Carolina

T. T. Clayton
307 West Franklin Street
Warrenton, North Carolina

Conrad O. Pearson
203½ East Chapel Hill Street
Durham, North Carolina

In The

UNITED STATES DISTRICT COURT

FOR THE

Eastern District of North Carolina

Wilson Division

[Title Omitted In Printing]

PROOF OF CLAIM

[Filed July 15, 1971]

124 Matthew Street
Roanoke Rapids, N. C.
July 14, 1971

To whom it may concern:

I have been employed at Albemarle Paper Mill since 1950. I have worked on a regular job there for 13 years. During that time I have worked on different jobs. During that time my seniority was taken from me and I had to work under the authority of men who had not been working there even as much as half the time that I have. Also, I was told that the only time that I would have a job was when someone went on vacation or if someone was sick.

Furthermore, they made it necessary for me to install a phone. I have had to sit at home many times in order to wait for a call. If I missed three calls I was not even allowed to get a slip to the employment office so that I could draw unemployment. They have hired quite a number of men since then, but I am still on the board filling out vacation and sick calls.

I cannot give any figures on what they owe me, but I do want my backpay and to 40 hours a week. Also I would like to have my seniority back and to be placed where I should be. I'm afraid I don't know where that should be, but my regular job was unloading salt cake. I am a part of a discriminated group. I want my rights and a regular job back.

Thank you for what you have tried to do.

Yours truly,

/s/ Mr. Eulis K. Lawson

In The

UNITED STATES DISTRICT COURT

FOR THE

Eastern District of North Carolina

Wilson Division

[Title Omitted In Printing]

PROOF OF CLAIM

[Filed July 19, 1971]

Star Route, Box 88-A
Roanoke Rapids, North Carolina 27870
July 17, 1971

Clerk of the United States District Court
Post Office Box 25670
Raleigh, North Carolina 27611

Dear Sir:

It is my concern to remain with Joseph P. Moody, et al., Plaintiffs vs. Albemarle Paper Company, et al., Defendants —Civil No. 989.

In reply to the notice filed with the United States District Court for the Eastern District of North Carolina Wilson Division on August 25, 1966, by Plaintiffs, I have been employed with the Albemarle Paper Company, Roanoke Rapids, North Carolina, since 1947. I am in no position to determine an unpaid amount in salary up to date in accordance to my position of employment.

Yours truly,

/s/ Johnie Easter

In The

UNITED STATES DISTRICT COURT

FOR THE

Eastern District of North Carolina

Wilson Division

[Title Omitted In Printing]

PROOF OF CLAIM

[Filed July 19, 1971]

Clerk of the United States District Court
Eastern District of North Carolina
P. O. Box 25670
Raleigh, North Carolina 27611

Re; Joseph P. Moody et al., vs. Albemarle Paper Company
Civil No. 989

Dear Sirs:

I wish to be a part of the above named Civil Action, I accepted employment with Albemarle Paper Company, Roanoke Rapids Plant on, December 1950. I was forced to seek employment elsewhere on, January 1966, due to the discriminatory practices of this employer. I wish to claim back pay, but due to the inability to state where I would be on present seniority list, due to the discriminatory practices of the above named employer, I ask that after all, factors are settled which pertain to seniority, that I be awarded back pay in line with my employment date with this company.

The above named employer discriminated against me in the form of testing by stating that I did not have the ability to hold positions, as the results of this testing. I am now a resident of the state of New Jersey, have passed the requirements of this state as a Shift Engineer, Power Plant Operator. I request that the present Attorneys for the Plaintiffs, also be considered as my Attorneys, My present address is as follows. Theodore Roosevelt Brown, 138 North 14th Street, East Orange New Jersey,

I enter this claim as a Class Action, because of race, under the Civil Rights Act of 1964.

I Theodore Roosevelt Borwn [sic], here by state under oath, that I have read the above and, sign the above under my own will.

/s/ Theodore Roosevelt Brown

[Jurat Omitting In Printing]

In The
UNITED STATES DISTRICT COURT
FOR THE
Eastern District of North Carolina
Wilson Division

[Title Omitted In Printing]

PROOF OF CLAIM

[Filed July 21, 1971]

Ethoria Jones
133 Lincoln Ave.
Roanoke Rapids, N. C.
27870

Dear Sirs:

I have filed a Claim with Mr. Joseph P. Moody attorney for damages. i was on Lay off for Over a year, and i Was Put on Call Board for Over 3 years. When the younger *White* Men was working. On some Jobs that i Now Opprate, But Before i Was not given the chance. iam still on Call Board and these same *White* men are still working. Some of the Jobs the *Black* Man is working, i did have the chance to work until the last past year.

Now the dates and the times i can not send you to day. for Mr. Joseph P. Moody attorney have that information.

the Amount of Damages i Cant say. Because for years this have went on. Over me. And all Other *Black* men at the *Plant*.

Yours truly

/s/ Ethoria Jones
133 Lincoln Ave.
Roanoke Rapids, N. C.
27870

phone—537-9990.

In The

UNITED STATES DISTRICT COURT

FOR THE

Eastern District of North Carolina

Wilson Division

[Title Omitted In Printing]

PROOF OF CLAIM

[Filed July 23, 1971]

Clerk of the United States District Court
Eastern District of North Carolina
P.O. Box 25670
Raleigh, North Carolina 27611

Re; Joseph P. Moody et al, vs Albemarle Paper Company
Civil No. 989

Dear Sirs:

I wish to be a part of the above named Civil Action: I accepted employment with Albemarle Paper Company, Roanoke Rapids Plant at Roanoke Rapids, North Carolina. Due to discriminatory practices of this employer, some were forced to seek employment elsewhere. I wish to claim back pay, but due to the inability to state where I would be on the present seniority list; due to the discriminatory practices of the above named employer, I ask that after all factors are settled which pertain to seniority, that I be awarded back pay in line with my employment date with this company.

The above named employer discriminated against me in the form of testing, by stating that I did not have the ability to hold positions, as the results of this testing.

I request that the present Attorneys for the Plaintiffs, also be considered as my Attorneys. My present address and name is attached.

I enter this claim as a Class Action; because of race, under the Civil Rights Act of 1964.

I have read the above, and sign the above under my own will.

Name/Address

Thomas Kearsey, Rba, Box 127 R.R.

Leroy Jordan, 515 West First St., Weldon, N. C.

William Thomas Vasser, Box 187, Garysburg, N. C.

Willie Joseph Bradley, 112 Prospect Ave., Weldon, N. C.

Jack Norton, P. O. Box 165, Garysburg, N. C.

Alexander Sledge, 706 W. F St., Weldon, N. C.

Reny Cowan, 524 W. First St., Weldon, N. C.

Leon Quick, P. O. Box 441, Roanoke Rapids, N. C.

Clarence Daniel, Roanoke Rapids, N. C.

Elizah Daniel, Roanoke Rapids, N. C.

Cecil M. Pierce, Rte. 2, Box 487, (Deceased)

East Hawkins, 1903 Glover St., Roanoke Rapids, N. C. (Deceased)

W. M. Martin, Rte. 1, Box 431, Roanoke Rapids, N. C.

Asa Roone, R 2, Box 50B, Roanoke Rapids, N. C.

William Garris, R. 1, Box 29, Garysburg, N. C.

Moses L. Garner, Route 1, Box 129A, Roanoke Rapids, N. C.

Name/Address

Hosea Roberts, 605 West 1st St., Weldon, N. C.

Robert McNair, Jr., 407 County Rd. (Deceased)

Paul C. Ingram, 1214 Snead

Willie H. Mason, Star Rt. Box 87

Jimmy V. Love, Route 626, Box 52, Valentine, Va.

Andrew M. Johnson, Rte. 1, Box 213, Jackson, N. C.

Otis Jones, Route 1, Box 107, Roanoke Rapids, N. C.

Eugene Neville, 130 Ligon St., Roanoke Rapids, N. C.

Willard Bufield, Box 30, Rt. 1, Garysburg, N. C.

F. B. Hardy, 334 E. Littleton Rd., Roanoke Rapids, N. C.

Richard Squire, 1914 Glover St., Roanoke Rapids, N. C.

Robie Mason, Star Rt., Box 134B, Emporia, Va.

Isaac M. Weaver, Rt. 2, Box 52, Lawrenceville, Va.

Eugene Vincent, Box 53, Henrico, N. C. (Deceased)

Mack Coy Boone, P. O. Box 38, Garysburg, N. C.

Sandy L. Johnson, 127 Poplar St., Roanoke Rapids, N. C.

William Town, RFD 216, Roanoke Rapids, N. C.

Ernest Gardner, 1929 Glover St., Roanoke Rapids, N. C.

James Mallory, 109 Prospect Ave., Weldon, N. C.

James Alfred Jones, 118 Lincoln Ave., Roanoke Rapids, N. C.

Name/Address

Jeremiah Webb, 307 Holm Dr., Weldon, N. C.

Frank Mayo, Rt. 2, Box 381M, Roanoke Rapids, N. C.

Charlie D. King, Star Route, Box 145, Emporia, Va.

Johnie E. Roberts, P. O. Box 453, Gaston, N. C.

Nonnie King, Star Route, Box 34, Roanoke Rapids, N. C.

Johnie Easter, Star Route, Box 88-A, Roanoke Rapids, N. C.

Julian Peebles, Rte 2, Box 279, Halifax, N. C.

*Mah..... H. Aven....., 154 Carver St., Roanoke Rapids, N. C.

Lonnie Lastrom, Box 132

J. T. Martin, 1939 Church St., Roanoke Rapids, N. C.

James Harris, Box 234, Garysburg, N. C. (Deceased)

Clarence High, Rt. 2, Box 381J, Roanoke Rapids, N. C.

Amos Harris, Henrico, N. C., Box 55

Eulis K. Lawson, 124 Matthews St., Roanoke Rapids, N. C.

Alfred P. Kidd, Route 1, Box 15C, Garysburg, N. C.

Willi Jones, 307 Kitchen St., Roanoke Rapids, N. C.

Jake Alston, Rt. 3, Box 326T, Littleton, N. C.

Robert Lee Alston, 127 Poplar St., Roanoke Rapids, N. C.

Gilbert Lee Harding, Rt. 1, Box 137, Pleasant Hill,

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* Where deletions occur, individual handwriting was illegible.

Name/Address

Davie Daniel Harding, Jr., Rt. 1, Box 9, Pleasant Hill

Herman Johnson, Route 2, Box 439C, Roanoke Rapids, N. C.

Samuel Moody, Star Rt. Box 23B, Roanoke Rapids, N. C.

Carlton Belfield, P. O. Box 187, Gaston, N. C.

Willie A. Ashe, Rte. 2, Box 272, Littleton, N. C.

Mason Vincent, Rt. 211, Box 54, Garysburg, N. C.

Ethoria Jones, 133 Lincoln Ave., Roanoke Rapids, N. C. 27870

R. R. Scott, Rt 1, Box 166, Garysburg, N. C.

Eugene Harris, P. O. Box 121, Seaboard, N. C.

L. G. Cooke, 308 Poplar St., Weldon, N. C.

[Jurat Omitted In Printing]

Clerk of the United States District Court
Eastern District of North Carolina
P. O. Box 25670
Raleigh, North Carolina 27611

Re; Joseph P. Moody et al, vs Albemarle Paper Company Civil No. 989

Dear Sirs:

I wish to be a part of the above named Civil Action: I accepted employment with Albemarle Paper Company, Roanoke Rapids Plant at Roanoke Rapids, North Carolina. Due to discriminatory practices of this employer, some were forced to seek employment elsewhere. I wish to clain

back pay, but due to the inability to state where I would be on the present seniority list; due to the discriminatory practices of the above named employer, I ask that after all factors are settled which pertain to seniority, that I be awarded back pay in line with my employment date with this company.

The above named employer discriminated against me in the form of testing, by stating that I did not have the ability to hold positions, as the results of this testing.

I request that the present Attorneys for the Plaintiffs, also be considered as my Attorneys. My present address and name is attached.

I enter this claim as a Class Action; because of race, under the Civil Rights Act of 1964.

I have read the above, and signed the above under my own will.

Name/Address

Jesse Mallory, Rt. ...., Box 20A, Garysburg, N. C.

Robert E. Coleman, Box 121, Garysburg, N. C.

Edward S. Lee, Box 22, Garysburg N. C.

John Juniaiso Jarrell, Rt. 1, Box 151, Roanoke Rapids, N. C.

Wom Jarrells, Rt. 1, Box 342, Roanoke Rapids, N. C.

Alphonso Owens, Star Rt., Box 82, Roanoke Rapids, N. C.

Walter Woul, Jr., P. O. Box 78, Garysburg, N. C.

[Jurat Omitted In Printing]

In The

UNITED STATES DISTRICT COURT

FOR THE

Eastern District of North Carolina

Wilson Division

[Title Omitted In Printing]

PROOF OF CLAIM

[Filed July 23, 1971]

Clerk of the United States District Court
Eastern District of North Carolina
P. O. Box 25670
Raleigh, North Carolina 27611

Re; Joseph P. Moody et al vs Albemarle Paper Company
Civil No. 989

Dear Sirs:

I wish to be a part of the above named Civil Action: I accepted employment with Albemarle Paper Company, Roanoke Rapids Plant at Roanoke Rapids, North Carolina. Due to discriminatory practices of this employer, some were forced to seek employment elsewhere. I wish to claim back pay, but due to the inability to state where I would be on the present seniority list; due to the discriminatory practices of the above named employer, I ask that after all factors are settled which pertain to seniority, that I be awarded back pay in line with my employment date with this company.

The above named employer discriminated against me in

the form of testing, by stating that I did not have the ability to hold positions, as the results of this testing.

I request that the present Attorneys for the Plaintiffs, also be considered as my Attorneys. My present address and name is attached.

I enter this claim as a Class Action; because of race, under the Civil Rights Act of 1964.

I have read the above and signed the above under my own will.

/s/ Charlie C. Jones
Rt. 1, Box 138
Roanoke Rapids, N. C.

/s/ Clarence Sorrell
Henrico, N. C.

[Jurat Omitted In Printing]

In The

UNITED STATES DISTRICT COURT

FOR THE

Eastern District of North Carolina

Wilson Division

[Title Omitted In Printing]

PROOF OF CLAIM

[Filed July 26, 1971]

Clerk of the United States District Court
Eastern District of North Carolina
P. O. Box 25670
Raleigh, North Carolina 27611

Re; Joseph P. Moody et al, vs Albemarle Paper Company
Civil No. 989

Dear Sirs:

I wish to be a part of the above named Civil Action: I accepted employment with Albemarle Paper Company, Roanoke Rapids Plant at Roanoke Rapids, North Carolina. Due to discriminatory practices of this employer, some were forced to seek employment elsewhere. I wish to claim back pay, but due to the inability to state where I would be on the present seniority list; due to the discriminatory practices of the above named employer, I ask that after all factors are settled which pertain to seniority, that I be awarded back pay in line with my employment date with this company.

The above named employer discriminated against me in the form of testing, by stating that I did not have the ability to hold positions, as the results of this testing.

I request that the present Attorneys for the Plaintiffs, also be considered as my Attorneys. My present address and name is attached.

I enter this claim as a Class Action; because of race, under the Civil Rights Act of 1964.

I have read the above, and sign the above under my own will.

Name/Address

Robert Avon, Box 3-9, Roanoke Rapids, N. C.

Joe Bagett, Jr., Box 1343, Roanoke Rapids, N. C.

Robert Paul, Jr., 503 West First St., Weldon, N. C.

Adolphus L. Scott, 10 Popular St., Weldon, N. C.

Thornton M. Majette, Garysburg, Box 135

[Jurat Omitted In Printing]

In The

UNITED STATES DISTRICT COURT

FOR THE

Eastern District Of North Carolina

Wilson Division

[Title Omitted In Printing]

STIPULATION OF FACTS

[Filed July 25, 1971 and admitted in evidence as a joint unnumbered exhibit (R. 37)]

It is hereby stipulated by and among counsel for the plaintiffs; counsel for the defendant, Albemarle Paper Company, a Virginia corporation; counsel for the defendant, Albemarle Paper Company, a Delaware corporation, counsel for the defendant Hoerner Waldorf, a Delaware corporation, counsel for the defendant, Ethyl Corporation, a Virginia corporation and counsel for the defendant, Halifax Local No. 425, United Papermakers and Paperworkers, AFL-CIO, that the following facts are true to the best of the knowledge and belief of all parties:

Exhibit A

1. Plaintiffs Joseph P. Moody, Theodore Daniels, Henry Hill and Arthur Mitchell are Negro citizens of the United States and the State of North Carolina, residing in the County of Halifax, North Carolina.

2. Defendant Albemarle Paper Company, the Virginia corporation, operated a pulp and paper plant in Roanoke

Rapids, North Carolina at the time this action was filed on August 25, 1966. Albemarle Paper Company (Virginia) was at the time suit was filed a wholly owned subsidiary of defendant Ethyl Corporation, a Virginia corporation. On October 31, 1968, during the pendency of this action, the Roanoke Rapids plant was transferred to defendant Albemarle Paper Company, a Delaware corporation, which is a subsidiary of defendant Hoerner Waldorf Corporation, also a Delaware corporation. Since November 1, 1968, the Roanoke Rapids plant has been operated by the Albemarle Paper Company (Delaware). The particular plant here involved is the Roanoke Rapids plant.

3. Plaintiffs Moody, Daniels and Hill were employed at the Roanoke Rapids plant for several years. Plaintiff Moody was initially employed in September, 1952. Plaintiff Hill was initially employed in October, 1947. Plaintiff Mitchell was initially employed in 1922; and he retired during the pendency of this action. Plaintiff Daniels, initially employed in 1955, has been promoted to the position of Service Crew Foreman, a position outside the collective bargaining unit.

4. As of June 30, 1967, approximately 637 persons were employed in production and maintenance jobs at the Roanoke Rapids plant. Of these approximately 120 were Negroes, 517 were white.

5. Defendant Halifax Local No. 425, United Papermakers and Paperworkers, AFL-CIO "the Union," is a local labor organization which is and has been a party to collective bargaining agreements with Albemarle Paper Company (Virginia) pertaining to certain production and maintenance employees at the Roanoke Rapids plant and negotiates on their behalf concerning the wages, terms and conditions of employment with respect to those employees.

The Union is engaged in an industry which affects interstate commerce and has more than 100 members. The Union is a labor organization within the meaning of Sections 701(d) and (e) of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000e(d) and (e). The plaintiffs are or have been members of the Union.

6. The principal business carried on at the Roanoke Rapids plant is the production of kraft paper, pulp and allied products. Since prior to 1950, certain production and maintenance employees at the Roanoke Rapids plant have been covered by collective bargaining agreements. Accordingly, all such employees have been classified for purposes of pay and seniority in accordance with Appendices A, C and F of the collective bargaining agreements or labor contracts attached hereto and designated as Exhibit 1 through 4 of this stipulation. (Exhibit No. 1 is the 1968 contract and Exhibit No. 2 is the 1965 contract; Exhibit No. 3 is the 1963 contract and Exhibit No. 4 is the 1961 contract).

7. The collective bargaining units at the Roanoke Rapids plant consists of all permanent employees with the exception of clerical employees, watchmen, wood procurement employees, technical employees, guards and supervisors.

8. The Roanoke Rapids plant originally started in 1970. In 1937, when defendant Albemarle Paper Company (Virginia) acquired the facility known then as the Halifax Paper Company, the various lines of work were either all white or all black. These lines of progression were formalized about 1954 or 1955. Copies of the lines of progression for the 1961, 1963, 1965 and 1968 labor contracts are attached hereto as Exhibit Nos. 1 through 4.

9. In accordance with Appendix F of the labor contracts, certain jobs are grouped into various lines of progression.

Using Appendix F of the 1965 contract as a point of reference, defendant Albemarle Paper Company (Virginia) did not, to the best of its knowledge, have any Negro employees permanently assigned in certain lines of progression prior to January 1, 1964. In this respect, there were no Negro employees permanently assigned in the Yard Crew line of progression in the Wood Yard Department; the knife grinder job classification; the Paper Machine line of progression in the A Paper Mill Department; the Beaterman line of progression in the Beater Room of the A Paper Mill; the Finishing Crew line of progression in the Product Department B Mill; the Shipping Crew line of progression in the Product Department B Mill; the Digester Operator and CE Recovery Operator lines of progression in the Pulp Mill Department; the Paper Machine Line of progression in the B Paper Mill Department; the Stockroom line of progression in the B Paper Mill Department; the Boiler Operator line of progression in the Boiler Room Department; and the Mill and the Laboratory lines of progression in the Technical Service Department.

10. Prior to January 1, 1964, the defendant Albemarle Paper Company (Virginia) did not, to the best of its knowledge, have any permanent white employees in certain lines of progression. In this respect, there were no permanent white employees in the Chipper Operator line of progression in the Wood Yard Department; the Services Crew line of progression in the Wood Yard Department and the Brokeman line of progression in the A Paper Mill Department; the Lead Loader Line of Progression in the Finishing Room Department A Mill; the Payloader line of progression in the Pulp Mill Department; the First Fireman line of progression in the Boiler Room Department and the "dead end" janitor classification.

11. In the 1968 labor contract certain changes were made in the lines of progression. (See Exhibit No. 1 to this Stipulation, Appendix F.) In this respect, the Chipper Operator line of progression and the Yard Crew line of progression were merged on the basis of rates of pay into one line of progression as shown on Appendix F of the 1968 labor contract; the First Fireman line of progression and the Boiler Operator line of progression in the Boiler Room Department were merged into one line of progression; a separate Kamyr Department was formed by taking the Kamyr Operator classification out of the Pulp Mill Department and combining that classification with the Lift Truck Operator and classifications of Baler and Laborer and making them into a separate line of progression as set forth in Appendix F in the 1968 labor contract; the Utility Helper classification formerly the Lancer classification was added to the CE Recovery line of progression in the Pulp Mill. The Service Crew line of progression was changed by adding the Payloader classification from the Pulp Mill Department to the top of that line and a separate Service Department was established. In the A Paper Mill Department the Brokeman line of progression was merged into the Beaterman line of progression. The "dead end" jobs of janitor in the A Paper Mill Department and Pulp Mill Departments were eliminated.

12. The racial composition by departments and job classifications at the Roanoke Rapids plant as of June 30, 1967 was as follows:

	Negro	*White*
A. *Wood Yard Department*		
Yard Crew		
Crane Operator (Large)	0	9
Long Log Operator	0	4
Log Stacker Operator	0	4
Small Equipment Operator	0	4
Bulldozer Operator	0	1
Oiler	0	4
Chip Unloader	1	3
Chain Operator	0	4
Chipper Operator No. 2		
Chipper Operator No. 1	4	0
Tractor Operator	5	0
Chip Bin Operator	4	0
Laborers	12	0
*Knife Grinder	0	1
Service Crew		
Dempster-Dumpster	1	0
Winch Truck Operator	3	0
Winch Truck Operator Helper	1	0
Laborer	6	0
B. *Pulp Mill Department*		
Digester Operator	0	4
Stock Room Operator	0	4
Stock Room First Helper	0	4

* The Knife Grinder is in the Wood Yard Department but is not in a line of progression. This position is occupied by a white person.

	Negro	*White*
Kamyr Operator	0	4
Stock Room Second Helper	0	4
Lead Loader-Blower	0	4
Loader	0	10
C.E. Recovery Operator	0	4
1st Helper No. 6	0	4
Second Helper	0	4
Caustic Operator	0	4
Lime Kiln Operator	0	4
General Utility Operator	0	1
By Products Operator	0	2
Payloader	1	0
Lancer	4	0
Salt Cake Man	1	0
Janitor—Dead End Job	1	0

C. *A Paper Mill Department*

Paper Machine Line Of Progression

Machine Tender No. 1	0	4
Machine Tender No. 2	0	4
Back Tender No. 1	0	4
Third Hand No. 1	0	4
Third Hand No. 2	0	4
Fourth Hand No. 1	0	4
Fourth Hand No. 2	0	4
Front Plugger No. 1	0	4
Back Plugger No. 1	1	4
Back Plugger No. 2	0	4
Beaterman	0	4
1st Helper	0	4
Brokeman	4	0
Stock Puller	0	0
Laborer	1	0

	Negro	*White*
D. *B Paper Mill Department*		
Machine Tender	0	8
Back Tender	0	8
Third Hand	0	8
Fourth Hand	0	8
Fifth Hand	0	8
Sixth Hand	0	8
Seventh Hand	0	4
Spare Hand	1	5
Janitor—Dead End Job	5	0
Stock Room Operator	0	4
Stock Room 1st Helper	0	4
Stock Room 2nd Helper	0	4
E. *Product Department B Papermill*		
Sheeter Operator	0	2
Rewinder Operator (large)	0	4
Rewinder Operator Helper (large)	0	4
Rewinder Operator (small)	0	4
Sheeter Operator Helper	0	4
Wrapper, Tier, Capper	1	16
Rewinder Plugger	1	2
Core Cutter	0	2
Janitors	3	0
Scale Clerk	0	5
Lift Truck Operator	0	13
Utility Man	0	8
Laborers	0	6

	Negro	*Whit*
F. *A Mill Finishing Department*		
Lead Loader	1	0
Lift Truck Operator	1	0
Lead Tier & Wrapper	1	0
Wrapper, Loader & Brokeman	2	0
G. *Boiler Department*		
Boiler Operator	0	4
H. *Power Plant Department*		
Power Plant Operator	0	4
1st Helper	0	4
2nd Helper	0	4
Utility Man	0	4
I. *Technical Service Department*		
B Mill Shift Testman	0	4
A Mill Shift Testman	0	4
General Lab Testman	0	2
Lab Trainee	1	10
Lab Assistant	0	2
Lab Leadman	0	1
J. *Storeroom Department*		
Storeroom Clerk A	0	2
Storeroom Clerk C	0	1
Storeroom Clerk D	0	0
K. *Maintenance Department Employees*		
1st Maintenance Emp. Appren.	0	1
2nd Maintenance Emp. Appren.	0	9
3rd Maintenance Emp. Appren.	0	4

	Negro	*White*
4th Maintenance Emp. Appren.	0	2
5th Maintenance Emp. Appren.	0	7
6th Maintenance Emp. Appren.	1	0
7th Maintenance Emp. Appren.	0	1
8th Maintenance Emp. Appren.	0	1
"C" Maintenance Employee	0	3
"B" Maintenance Employee	0	3
"A" Maintenance Employee	0	99
Leadman Maintenance Employee	0	7
L. *Miscellaneous*		
General Extra Board	2	62
Utility Extra Board	50	0
Truck Drivers	0	4

13. Promotion within a line of progression is governed by seniority and ability. Sections 10.1.1 of the 1965 and 1968 Labor Agreements provide in part that "when all factors that constitute ability are relatively equal, then seniority in keeping with established lines of progression within a given department (as shown on attached Appendix F) shall prevail."

14. Three kinds of seniority are provided for in the labor agreements—job, department and plant: (A) *Job seniority* is defined as total length of continuous service in a particular job classification; seniority in a higher job(s) in the same line of progression shall be counted toward job seniority in lower job(s) in said line of progression; (B) *Department seniority* is defined as length of continuous service in one of the departments listed in Appendix F; (C) *Plant seniority* is defined as length of continuous service from most recent date of employment.

15. The seniority system employed basically utilizes job seniority for promotions and demotions. Sections 10.4.2 of the 1965 and 1968 Labor Agreements provide:

> When the vacancy or reduction is expected to continue for a period of more than two (2) weeks, job seniority in accordance with the provisions of 10.1.1 [see 13 *supra*] will apply across all shifts of the line of progression. Employees will be laid off and rehired from the bottom of the line, in accordance with this provision.

This means that the employee who has the greater seniority in the job immediately below the vacancy to be filled will normally be given the first opportunity to fill the vacancy even though other employees in the same job classification have more plant and departmental seniority assuming that the person has the necessary ability, experience and training to do the higher job.

16. The 1965 labor agreement Section 10.2 provided that employees could request transfers from one department (or line of progression) to another department (or line of progression). This provision was contained in the labor agreements prior to 1965. Whether or not the transfer was granted was within the sole discretion of the company. If an employee transferred at his own request, his seniority in his former department or line of progression ceased immediately unless within 30 days the employee returned to his former department or line of progression because of his health or physical condition. When the transfer is effected at the request of the company, his seniority in the department (or line of progression) left shall be retained for a period of six months from date of transfer. An employee transferred under Sections 10.2 of the 1965 labor agreement would, absent special circumstances, enter at

the bottom job in the line of progression and could suffer a reduction in pay if that job to which he was permitted to transfer to carried a rate of pay less than the job from which the employee transferred.

17. In 1968, the Labor Agreement was amended to read:

> "10.2.1 Employees who wish to transfer from one department (or line of progression) to another may file through their foreman with the Personnel Department of the Company written application stating the department (or line of progression) and the job therein to which he wishes to be transferred. The decision of the Company in granting or denying such request for transfer is to be final. However, when an employee transfers from one department (or line of progression) to another upon his own request, his seniority in the department (and line of progression) left shall cease immediately unless within thirty (30) days from the date of such transfer the health or physical condition of such employee makes it advisable to transfer him back to the department (or line of progression) left. Where the transfer is effected at the request of the Company, his seniority in the department (or line of progression) left shall be retained for a period of six months from date of transfer.
>
> "10.2.2 When the Company grants a transfer as described in 10.2.1, then the transferred employee will be vested with department and job seniority equal to that held in his last job or equal to that held in the lowest job in the line of progression from which transferred.

"10.2.3 When the Company grants such a transfer as described in 10.2.1, then the transferred employee will be paid his present rate if higher than the rate of the job to which transferred until such time as the employee progresses to a job in the new line of progression which pays as much or more than his rate in his last classification in his former line of progression. An employee who is permitted to carry a higher rate to another department or line of progression shall have such rate reduced to the rate of the job to which he is transferred if the employee is deemed at the time a 'permanent' vacancy occurs in the next higher job in the new line of progression to be unqualified for such job, or with the Company's approval declines a promotion to such a job. Such an employee shall not lose his 'red circle' rate if deemed unqualified and the sole reason for his lack of qualification is a determination by the Company that he has not had sufficient time in the new line of progression to obtain the training and experience necessary for promotion. In applying Section 10.2.1, if the Company decides to fill a vacancy by transferring an employee who has made application pursuant to the foregoing provisions and there are on file more than one such application for the job opening, then the Company will offer the transfer to the senior qualified employee making application."

The rate retention provision referred to in Section 10.2.3 is commonly known as "red circling."

18. In the negotiations between Albemarle Paper Company (Virginia) and the Union leading to the 1968-1971 labor agreement the Union proposed but withdrew: ". . . in

case of promotion and transfer for employees covered by this agreement to jobs within the bargaining unit, the senior qualified employee will be promoted or transferred." Albemarle Paper Company (Virginia) proposed Sections 10.2.2 and 10.2.3 which were accepted by the Union. These Sections provide seniority on transfers and carry-over of higher wage rates ("red circling") on such transfers.

19. The Union withdrew their proposals as referred in 18, *supra*. Additionally, the Union proposed but withdrew: "In the event of layoff, any qualified employee may exercise his plant seniority to any bottom level job."

20. Prior to 1958, no employment personnel tests were given to applicants for employment at the Roanoke Rapids plant. In about 1956, the then Personnel Manager, William Warren, was requested to design a personnel screening program for the use in the selection of new employees to be hired for jobs created by the installation of the new #4 Paper Machine. In this connection, Warren selected two paper and pencil tests—the Revised Beta Examination (Beta) and the Bennett Mechanical Comprehension. New employees hired for the General Extra Board and the Maintenance Department were required to score successfully on the Beta as well as have high school education.

21. In an effort to validate the Beta, Personnel Manager Warren administered this examination to a sample of employees who worked on the #3 Paper Machine, maintenance employees and possibly some employees in the Pulp Mill. The method that he followed is known by Industrial Psychologists as concurrent validation, *i.e.*, employees that were tested were then rated by their supervisors on the basis of performance on the job. As a result of this study, Warren established a cut-off score of 100 for the Beta. No

Negroes are known to have been included in Warren's sample.

22. In about 1963, the then Personnel Manager, John Bryan discontinued use of the Bennett Mechanical Tests which had been previously administered to job applicants since no positive correlation for the Bennett Test was established by Bryan's predecessor, Warren, in his studies. This occurred in the latter part of 1963 and Bryan ceased using the Bennett and initiated use of the Wonderlic, A and B series, along with the Beta Test. Since that time the two pre-employment tests, the Beta and Wonderlic, Series A and B, have been administered to applicants for Crane Operator (Wood Yard), Digester and C.E. Recovery (Pulp Mill), Paper Machine and Beater (A Paper Mill), Paper Machine and Stock Room, (B Paper Mill) Power Plant Operator (Power Plant), Boiler Operator (Boiler Room) Mill and Laboratory (Technical Services) and Finishing and Shipping Crew (B Mill Product) lines of progression.

23. The Wonderlic was selected in 1963 by Bryan, a Psychology graduate from Vanderbilt University, and Masters Degree in Public Administration from the University of North Carolina. Bryan was familiar with the Wonderlic Tests as well as other psychological tests and felt it essential for new employees to have certain verbal facilities because of the increasing technical nature of Mill operations. Bryan does not hold himself out as an expert in industrial testing; nor did the Albemarle Paper Company (Virginia) have an independent test consultant.

24. The cut-off score which was utilized for the Wonderlic A and B is eighteen (18) on either test.

25. Albemarle Paper Company (Virginia) agrees that if he were present and testifying in open court, Dr. Raymond Katzell* would testify as follows:

(a) The Wonderlic Tests are verbal tests of general mental ability. They are professionally developed tests in the process of constructing the test originally, professional considerations guided the selection of the items included and the checking out of their suitability.

(b) Some industrial psychologists believe that on written tests the average score obtained by blacks as a group are lower than the average score obtained by whites as a group. Although the reasons for this are not entirely clear, it is explained in part by the fact that blacks in many parts of the country obtain inferior schooling as compared to white, and in part by the fact that in some cultural backgrounds where blacks are not accustomed to close working relationships with whites, test scores of blacks are affected by having the test administered by white examiners. This is true not only for Negroes, but also for Mexicans, Puerto Ricans and poor whites. Although psychologists have made and are making an effort to construct cultural free tests, these efforts have not been successful so far.

(c) In his opinion, the critical factor by which a test should be judged is whether the test is valid (validity), *i.e.*, does it measure performance on the job.

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* Dr. Katzell is Professor and Head of the Department of Psychology at NYU. Among other things he is a consultant to the Department of Labor, Office of Federal Contract Compliance on the development of testing guidelines for employers who hold contracts with the U.S. Government.

(d) In his opinion, if the test is not valid, *i.e.*, has no positive correlation with performance on the job, then the test should not be used.

(e) In his opinion, the use of ability tests without validating them is an unsound psychological practice because the tests may disqualify employees who could perform as well as employees who pass the test. The only way you can tell whether the test does this is to validate the test.

(f) There is some evidence that Albemarle Paper Company (Virginia) made an effort at validating the Beta test at the Roanoke Rapids plant, but it did not have data with respect to the job relevance of the Beta for Negro candidates as separate from white candidates.

(g) In his opinion, in determining whether a testing program conforms with sound professional practice, the psychologist should (1) perform a job analysis, (2) conduct a validation study and (3) arrive at a proper cut-off score. In conducting a job analysis, the psychologist could properly look at the requirements for the top job when functionally related jobs are combined into a line of progression.

(h) During the time that an emplyee is working on a job within a line of progression he normally would have an opportunity for on-the-job training in the job immediately above that which he is permanently assigned to during temporary periods, *e.g.*, vacations, illness, etc., which may affect his job performance ability.

(i) The Wonderlick Tests used at the Roanoke Rapids plant have not been validated for incumbent employees.

(j) The Beta Test is a non-verbal or pictorial test. It was originally developed in World War I by the Government in an effort to measure the intelligence of illiterate people.

(k) In his opinion, a significant change in the make-up of a population group tested may cause variations in the validity of a test.

(l) It cannot be assumed that the correlation between Negro test performance and job performance will be the same as that for white employees. Nor can it be assumed that there will be a difference. The only way a positive or negative correlation can be determined is to have the test validated.

(m) A validation study would also permit a company to determine whether the present cut-off scores should be raised or lowered. Such a study would "cost a not inconsiderable sum" and may not be theoretically feasible because of an inadequate sample.

(n) Both the Office of Federal contract compliance and the Equal Employment Opportunity Commission have promulgated guidelines on employment testing.

(o) The conduct of validity studies may be beneficial to business in improving its selection procedures.

26. Dr. Katzell testified that, in his opinion, the high school education requirement should also be related to performance on the job. He further stated that "general experience may frequently suggest that the people with

higher levels of education do in fact, turn out to be better performers."

27. In the 1950's Albemarle Paper Company (Virginia) started a system of utilizing class boards for the purpose of having a reservoir of employees who would be on call to staff the bottom jobs in the lines of progression. Two boards were set up—the General Extra Board and the Utility Extra Board.

28. Employees on the General Extra Board, which was used to supply the Yard Crew, Digester, C.E. Recovery, Paper Machine (A and B Mills) Finishing Crew, Shipping Crew, Boiler Operator, Power Plant, Mill, Laboratory and Maintenance lines of progression were required to have a high school education and pass the tests after those qualifications for employment were started. As of June 30, 1967, there were 62 White employees on the General Call Board and 2 Negro employees.

29. The Utility Extra Board was used to have a reservoir of employees to staff jobs in the Chipper, Service Crew, Payloader, Brokeman, First Fireman and Lead Loader lines of progression. To be hired on the Utility Extra Board, an employee was not required to have a high school education, nor required to qualify on the pre-employment tests. As of June 30, 1967, there were 50 employees on the Utility Extra Board; all of whom were Negro.

30. When a layoff occurs within a line of progression or department, the employees bump downward and the most junior employees are either laid off or offered Call Board work. Employees who are returned to the Call Board or are laid off retain their seniority rights in their former department and line of progression, but do not have a seniority preference to an opening in a different department or line of progression.

31. In 1959 the Albemarle Paper Company (Virginia) with the Union's agreement set up a formalized training program for maintenance employees which is called the Maintenance Apprenticeship Program. A committee of three Maintenance employees, selected by the Union, and three members, selected by the Maintenance Superintendent, review the Apprenticeship Program and periodically review the performance of apprentices and recommend action to the Maintenance Superintendent. Selection of applicants for the Apprenticeship Program is conducted by the Personnel Office and appropriate Maintenance supervision. Whether or not a particular person enters the program ultimately depends upon the selection by the Maintenance Superintendent. The relevant provisions of the contract pertaining to the Maintenance Program are set forth in Appendix C of the Labor contracts (Exhibits Nos. 1-4). The first Negro to enter the Apprenticeship Program entered that Program in August of 1964, and there were 4 Negroes who participated in the program through September 26, 1967.

32. In December of 1964 the Albemarle Paper (Virginia) offered incumbent Negro employees who were then working in the Chipper, Service Crew, Payloader, Brokeman, First Fireman and Lead Loader lines of progression an opportunity to take the personnel tests in order to be considered for other jobs in other lines of progression and decided to waive its high school education requirement for incumbent Negro employees who could successfully pass those tests. This offer was made a second time on November 4, 1965 and some Negro employees took the tests and were transferred.

33. Each incumbent Negro employee was given an opportunity to take the tests but some refused, including all

of the named plaintiffs in this case. A majority of those who took the tests failed them.

34. In the 1968 labor contract the Crane operator and Chipper Operator lines of progression were merged into one line of progression on the basis of rates of pay. Future promotions in this line of progression are based upon ability and job seniority of the competing employees as set forth in the current labor contract.

35. Plaintiffs Joe P. Moody, Theodore Daniels, Arthur Mitchell and Henry Hill have filed charges with the Equal Employment Opportunity Commission.

36. Plaintiffs received letters dated July 28, 1966 from the Equal Employment Opportunity Commission notifying them that they were entitled to file suit under Title VII in Federal District Court.

37. The complaint in this action was filed on August 25, 1966, or within 30 days after receipt of appropriate notice from the Equal Employment Opportunity Commission.

The foregoing Stipulations of Fact have been agreed to this 10th day of July, 1971.

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APPENDIX F TO AGREEMENT DATED SEPT. 23, 1968

WOOD YARD DEPARTMENT

Crane Operator (American)
↑
Crane Operator (Large)
↑
Long Log Operator
↑
Log Stacker Operator
↑
Small Equipment Operator
↑
Bulldozer Operator
↑
Oiler
↑
Chip Unloader
↑
Chipper Operator No. 2
↑
Chain Operator
↑
Chipper Operator No. 1
↑
Tractor Operator
↑
Chip Bin Operator
↑
Laborer (Start)

PULP MILL DEPARTMENT

Digester Operator (Cooker)	C. E. Recovery Operator	Caustic Operator
↑	↑	↑
Stock Room Operator	1st Helper No. 6	Lime Kiln Operator
↑	↑	
Stock Room 1st Helper	*Evaporator Operator	
↑	↑	
Stock Room 2nd Helper	1st Helper No. 5	
	↑	
	2nd Helper	
	↑	
	Utility Helper	
	↑	
	By Products Operator	
	↑	
	Lead loader-Blower	
	↑	
	Loader (Start)	

*When Used

POWER PLANT DEPARTMENT

Power Plant Operator
↑
1st Helper
↑
2nd Helper (Start)

PRODUCT DEPARTMENT B MILL

FINISHING CREW		SHIPPING CREW
Rewinder Operator (Large)	Slitter Operator	Scale Clerk
↑	↑	↑
Rewinder Operator Helper (Large)	Slitter Operator Helper	Lift Truck Operator
↑		↑
Rewinder Operator (Small)		Utility Man
↑		↑
		Laborer (Start)
↑		
Wrapper, Tier, Capper		
↑		
Rewinder Plugger	Unwinder	
↑	↑	
Laborers (Start)		

BOILER ROOM DEPARTMENT

Boiler Operator
↑
Back Boiler Operator
↑
First Fireman
↑
Second Fireman
↑
Laborer (Start)

A PAPER MILL DEPARTMENT

PAPER MACHINE	BEATER ROOM
Line of Progression	*Line of Progression*
Machine Tender No. 1	Beaterman
↑	↑
Machine Tender No. 2	1st Helper
↑	↑
Back Tender No. 1	Beaterman (Start)
↑	
Back Tender No. 2	
↑	
Third Hand No. 1	
↑	
Third Hand No. 2	
↑	
Fourth Hand No. 1	
↑	
Fourth Hand No. 2	
↑	
Front Plugger No. 1	
↑	
Back Plugger No. 1	
↑	
Back Plugger No. 2 (Start)	

B PAPER MILL DEPARTMENT

PAPER MACHINE	STOCK ROOM
Line of Progression	*Line of Progression*
Machine Tender	Stock Room Operator
↑	↑
Back Tender	Stock Room 1st Helper
↑	↑
Third Hand	Stock Room 2nd Helper
↑	
Fourth Hand	
↑	
Fifth Hand	
↑	
Sixth Hand	
↑	
Seventh Hand	
↑	
Spare Hand No. 4 (Start)	

KAMYR DEPARTMENT

Kamyr Operator
↑
Lift Truck Operator
↑
Baler
↑
Laborer

SHIPPING ROOM DEPARTMENT A MILL

Lead Loader
↑
Lift Truck Operator
↑
Lead Tier and Wrapper
↑
Wrapper, Loader, Laborer (Start)

TECHNICAL SERVICE

MILL	LABORATORY
B Mill Shift Technician	General Lab Technician
↑	↑
Additive Man	General Lab Assistant
↑	
A Mill Technician	
↑	
Sampleman	
↑	
Trainee	

SERVICE DEPARTMENT

Payloader
↑
Designated Digester Operator
↑
Winch Truck Operator
↑
Truck Operator
↑
Winch Truck Operator Helper
↑
Laborer (Start)

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Roanoke Rapids Division
Albemarle Paper Manufacturing Company, Inc.

and

Halifax Local No. 435
and United Papermakers and Paperworkers (AFL-CIO)

LINES OF PROGRESSION

WOOD YARD DEPARTMENT

Yard Crew

Crane Operator (Large)
↑
Long Log Operator
↑
Log Stacker Operator
↑
Small Equipment Operator
↑
Bulldozer Operator
↑
Oiler
↑
Chip Unloader
↑
Chain Operator (Start)

Chipper

Chipper Operator No. 2
↑
Chipper Operator No. 1
↑
Tractor Operator
↑
Chip Bin Operator
↑
Laborer (Start)

Service Crew

Dumpster Dumpster Operator
↑
Winch Truck Operator
↑
Truck Operator
↑
Winch Truck Operator Helper
↑
Laborer (Start)

(Note 1. Should the bulldozer operator job be discontinued, the employee may move back down the line of progression according to seniority only in jobs he actually worked previously in moving up the line.)

(Note 2. The Knife Grinder is in the Wood Yard Department, but not in a line of progression.)

PULP MILL DEPARTMENT

Digester Operator (Cooker)
↑
Stock Room Operator
↑
Stock Room 1st Helper
↑
Kamyr Operator
↑
Stock Room 2nd Helper

C. E. Recovery Operator
↑
*No. 4 Recovery Operator
↑
1st Helper No. 6
↑
*Evaporator Operator
↑
1st Helper No. 5
↑
Bark Burner Operator
↑
2nd Helper
↑
By-Products Operator
↑
Lead Loader-Blower
↑
Loader (Start)

Caustic Operator
↑
Lime Kiln Operator

Boiler Operator

(Note: Bark Boiler Operators who have not been promoted to that job from Recovery Helper will not have seniority for any other job.

Payloader
↑
Lancer
↑
Lift Truck Operator
↑
Salt Cake Man
↑
Laborer

*When Used — Dead End Job—Janitor

A PAPER MILL DEPARTMENT

Paper Machine
Line of Progression

Machine Tender No. 1
↑
Machine Tender No. 2
↑
Back Tender No. 1
↑
Back Tender No. 2
↑
Third Hand No. 1
↑
Third Hand No. 2
↑
Fourth Hand No. 1
↑
Fourth Hand No. 2
↑
Front Plugger No. 1
↑
Back Plugger No. 1
↑
Back Plugger No. 2 (Start)

Beater Room
Line of Progression

Beaterman
↑
1st Helper (Start)

Broke man
↑
Laborer (Start)

Dead End Job—Janitor

B PAPER MILL DEPARTMENT

Paper Machine
Line of Progression

Machine Tender
↑
Back Tender
↑
Third Hand
↑
Fourth Hand
↑
Fifth Hand
↑
Sixth Hand
↑
Seventh Hand
↑
Spare Hand No. 4 (Start)

Stock Room
Line of Progression

Stock Room Operator
↑
Stock Room 1st Helper
↑
Stock Room 2nd Helper

Power Plant Dept.

Power Plant Operator
↑
1st Helper
↑
2nd Helper
↑
Utility Man (Start)

PRODUCT DEPARTMENT B MILL

Finishing Crew

Rewinder Operator (Large)
↑
Rewinder Operator Helper (Large)
↑
Rewinder Operator (Small)

Sheeter Operator
↑
Sheeter Operator Helper

Wrapper, Tier, Capper
↑
Rewinder — Plugger — Carecutter
↑
Laborers (Start)

Shipping Crew

Stock Clerk
↑
Lift Truck Operator
↑
Bander, Wrapper, Weigher
↑
Elevator Operator
↑
Utility Man
↑
Laborer (Start)

BOILER ROOM DEPARTMENT

Boiler Operator
↑
Bark Burner Operator
(From Pulp Mill Section)

First Fireman
↑
Second Fireman
↑
Laborer (Start)

TECHNICAL SERVICE DEPARTMENT

Mill
Line of Progression

B Mill Shift Testman
↑
A Mill Shift Testman
↑
Shift Testman Trainee

Laboratory
Line of Progression

General Lab. Testman
↑
General Lab. Assistant
↑
Lab. Trainee

Dead End Job—Lab. Assistant

Lines of Progression for Maintenance Department Employees will be found in the Labor Agreement booklet.

FINISHING ROOM DEPT. A MILL

Lead Loader
↑
Lift Truck Operator
↑
Lead Tier and Wrapper
↑
Wrapper Loader, Laborer (Start)

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Appendix F to Agreement dated September 18, 1965

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LINES OF PROGRESSION

WOOD YARD DEPARTMENT

Yard Crew

Large Crane Operator
Small Equipment Operator
Bulldozer Operator
Oiler
Chip Unloader
Chain Operator *Start*

Chipper Feeder No. 2

Chipper Feeder No. 1
Tractor Driver
Chip Bin Man
Laborers *Start*

Service Crew

Winch Truck Driver
Truck Driver
Winch Truck Helper
Laborers *Start*

(Note 1. Should the bulldozer operator job be discontinued the employee may move back down the line of progression according to seniority only in jobs he actually worked previously in moving up the line.)

(Note 2. The Knife Grinder is in the Wood Yard Department, but not in a line of progression.)

PULP MILL DEPARTMENT

Digester Operator
Stock Room Operator
Stock Room Operator 1st Helper
Kamyr Operator
Stock Room Operator 2nd Helper

Recovery Operator
*No. 4 Recovery Operator
No. 3 Recovery 1st Helper
*Evaporator Operator
No. 2 Recovery 1st Helper
Bark Boiler Operator
Recovery 2nd Helper

Caustor Operator
Lime Kiln Operator

Boiler Operator

By-Products Operator
Loader Blower
Loader (Start)

(Note: Bark Boiler Operators who have not been promoted to that job from Recovery Helper will not have seniority for any other job.

Payloader
Fork Lift Driver
Salt Cake Man (Lancer—when used)
Laborer

*When Used

Dead End Job—Janitor

A PAPER MILL DEPARTMENT

Paper Machine
Line of Progression

No. 1 Machine Tender
No. 2 Machine Tender
No. 1 Back Tender
No. 2 Back Tender
No. 1 Third Hand
No. 2 Third Hand
No. 1 Fourth Hand
No. 2 Fourth Hand
No. 1 Front Plugger
No. 1 Back Plugger
No. 2 Back Plugger *(Start)*

Beater Room
Line of Progression

Beaterman
First Helper *(Start)*

Brokeman
Laborer *(Start)*

Dead End Job—Janitor

B PAPER MILL DEPARTMENT

Paper Machine
Line of Progression

Machine Tender
Back Tender
Third Hand
Fourth Hand
Fifth Hand
Sixth Hand
Spare Hand *(Start)*

Stock Room
Line of Progression

Stock Room Operator
Stock Room 1st Helper
Stock Room 2nd Helper

PRODUCT DEPARTMENT B MILL

Finishing Crew

Large Rewinder Operator
Large Rewinder Helper
Small Rewinder Operator

Sheeter Operator
Sheeter Helper

Wrapper, Tier, Capper
Pluggers
Corecutter
Laborers (Start)

Shipping Crew

Scale Clerk
Lift Truck Operator
Bander, Stenciller, Weigher
Elevator Operator
Utility Man
Laborer

BOILER ROOM DEPARTMENT

Boiler Operator
Bark Boiler Operator *(From Pulp Mill Section)*

First Fireman
Second Fireman
Laborers *(Start)*

FINISHING ROOM DEPT. A MILL

Lead Loader
Lift Truck Driver
Lead Wrapper, Lead Tier
Wrapper, Loader, Laborers (Start)

TECHNICAL SERVICE DEPARTMENT

Mill
Line of Progression

No. 3 Shift Testman
No. 1 Shift Testman
Shift Testman Trainee

Laboratory
Line of Progression

General Lab. Testman
General Lab. Assistant
Lab. Testman Trainee

Dead End Job—Lab. Assistant

Lines of Progression for Maintenance Department Employees will be found in the Labor Agreement booklet.

HALIFAX PAPER COMPANY, Inc.

LINES OF PROGRESSION

WOOD YARD SECTION

Yard Crew

Large Crane Operator
↑
Small Crane Operator
↑
Bulldozer Operator
↑
Oiler
↑
Chip Unloader
↑
Chain Operator
Start

Chipper Feeder

Tractor Driver
↑
Chip Bin Man
↑
Laborers
Start

Bull Gang

Winch Truck Driver
↑
Truck Driver
↑
Watch Truck Helper
↑
Laborers
Start

Note 1. Should the bulldozer operator job be discontinued the employee may move back down the line of progression according to seniority only in the order actually worked previously in moving up the line.

Note 2. The Knife Grinder is in the Wood Yard Section, but not in a line of progression.

PULP MILL SECTION

Digester Operator
↑
Stock Room Operator
↑
Stock Room Operator 1st Helper
↑
Kamyr Operator
↑
Stock Room Operator 2nd Helper
↑
By-Products Operator
↑
Loader Blower
↑
Loader (Start)

Recovery Operator
↑
*No. 4 Recovery Operator
↑
*Evaporator Operator
↑
No. 6 Recovery 1st Helper
↑
No. 5 Recovery 1st Helper
↑
Bark Boiler Operator
↑
Recovery 2nd Helper

Caustic Operator
↑
Lime Kiln Operator

Boiler Operator

(Note: Back Boiler Operators who have not been promoted to that job from Recovery Helper will not have seniority for any other job. Will not go below Recovery 2nd Helper for relief or promotion to Power Boiler.)

Paymaster
↑
Fork Lift Driver
↑
Salt Cake Man (Lancer—when used)
↑
Laborer

*When Used

Dead End Job—Janitor

NO. 1 PAPER MILL SECTION

Paper Machine Unit

No. 1 Machine Tender
↑
No. 2 Machine Tender
↑
No. 1 Back Tender
↑
No. 2 Back Tender
↑
No. 1 Third Hand
↑
No. 2 Third Hand
↑
No. 1 Fourth Hand
↑
No. 2 Fourth Hand
↑
No. 1 Front Plugger
↑
No. 1 Back Plugger
↑
No. 2 Back Plugger
(Start)

Beater Room Unit

Beaterman
↑
First Helper
(Start)

Broke man
↑
Laborer
(Start)

Dead End Job—Janitor

NO. 3 PAPER MILL SECTION

Paper Machine Unit

Machine Tender
↑
Back Tender
↑
Third Hand
↑
Fourth Hand
↑
Fifth Hand
↑
Sixth Hand
↑
Spare Hand
(Start)

Stock Room Unit

Stock Room Operator
↑
Stock Room 1st Helper
↑
Stock Room 2nd Helper

PRODUCT UNIT, NO. 3 MILL

Finishing Crew

Large Rewinder Operator
↑
Large Rewinder Helper
↑
Small Rewinder Operator
↑
Wrapper, Tier, Capper
↑
Packagers
↑
Laborers (Start)

Sheeter Operator
↑
Sheeter Helper

Corecutter
↑
Laborers (Start)

Shipping Crew

Scale Clerk
↑
Lift Truck Operator
↑
Bander, Stenciller, Weigher
↑
Elevator Operator
↑
Utility Man
↑
Laborer

FINISHING ROOM UNIT NO. 1 MILL

Lead Loader
↑
Lift Truck Driver
↑
Lead Wrapper, Lead Tier
↑
Wrapper, Loader, Laborers (Start)

BOILER ROOM SECTION

Boiler Operator
↑
Back Boiler Operator
(From Pulp Mill Section)

First Fireman
↑
Second Fireman
↑
Laborers
(Start)

TECHNICAL SERVICE SECTION

Mill Unit

No. 3 Shift Testman
↑
No. 1 Shift Testman
↑
Shift Testman Trainee

Laboratory Unit

General Lab. Testman
↑
General Lab. Assistant
↑
Lab. Testman Trainee

Dead End Job—Lab. Assistant (Female)

Lines of Progression for Maintenance Department Employees will be found in the Labor Agreement booklet.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

Civil Action No. 989

JOSEPH P. MOODY, ET AL.,

Plaintiffs,

VS.

ALBEMARLE PAPER COMPANY, ET AL.,

Defendants.

Proceedings before the HONORABLE F. T. DUPREE, JR., Judge, Presiding, United States District Court for the Eastern District of North Carolina, Wilson Division, Courtroom No. 1, Raleigh, North Carolina commencing at or about the hour of 9:00 o'clock a.m., Monday, July 26, 1971.

APPEARANCES:

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ROBERT BELTON, *Attorney at Law,* Chambers, Stein, Ferguson & Lanning, Charlotte, North Carolina, and; T. T. CLAYTON, *Attorney at Law,* Clayton and Ballance, Warrenton, North Carolina, appearing on behalf of Plaintiffs.

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PAUL M. THOMPSON, *Attorney at Law,* Hunton, Williams, Gay, Powell & Gibson, Richmond, Virginia, and;

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WARREN W. WOODS, *Attorney at Law,* Wilson, Woods & Villalon, Washington, D.C., and;

JAMES B. LEDFORD, *Attorney at Law,* Charlotte, North Carolina, appearing on behalf of Defendants.

WHEREUPON, the following proceedings were had, to wit:

COLLOQUY BETWEEN THE COURT AND COUNSEL

[11] * * *

The Court: All right, sir. Mr. Lowden?

Mr. Lowden: If the Court please, I think there are four issues here and I will address myself to them very briefly. First, the injunctive relief. The defendants believe that no injunction is warranted in this case. We believe that whatever relief they may have been entitled to some years ago we took care of in 1968, and that under the circumstances we would fight very hard not be enjoined. However, without admitting any violation of Title VII, we have concluded to say to your Honor this morning that insofar as an injunction to provide plant seniority for these people along the lines of the system that we set forth in [12] the proposed consent agreement, a copy of which I have left on your desk, we would not burden the Court today with all the evidence that we think bears on that issue. I think it's all in the depositions. And without admitting any guilt on our part, we can elimi-

nate that part of the case because we would not object to an order along those lines.

Now, with respect to the educational and testing requirements, our position is quite different. We do not believe that the *Griggs* case applies here or controls here. We think that this is an entirely different case. We think that if we have not already shown in the depositions that we will show during the trial that our testing and educational programs were instituted in an entirely different setting. We think we are going to show to the satisfaction of the Court that they were job related and are job related and that they have been [13] validated in accordance with the guidelines that are currently in effect. There is one other point. I think we have a brief in our pre-trial memorandum, and that is with respect to the Beta test. I don't think that we can assume here that the Beta test is discriminatory. I think the theory of testing is that where a test discriminates against people because of their illiteracy or their background and then is not job related, that it violates Title VII, that's the argument.

In our case, the principal test used was the Beta examination. It was developed in World War I for the purpose of determining the intelligence of illiterate people. There is no evidence, whether it is job related or not, that it discriminates against anybody because of their races or background, but only discriminates against them because of their intelligence.

We feel that our tests are valid [14] and that at no time have they been in violation of the Civil Rights Act of 1964.

With respect to back pay, here again, we do not feel that there should be any back pay. We have several reasons for stating that; I think we have them briefed in the pre-trial memorandum and I won't burden you with repeating all of those arguments now.

I would like to make a special note with respect to the issue of attorney fees. We feel that the time spent on this case, the voluminous papers that we have here, we feel that was all unnecessary. We believe that the principal facts and the operative facts that your Honor is going to take into consideration and determine in this case could have been stipulated in a matter of just a few minutes; that all of this rigamarole we've been through primarily has been just an exercise in futility, as far as I'm concerned, and we [15] don't believe that the prevailing party ought to be rewarded for that sort of activity.

* * *

The Court:

[26] * * *

Perhaps we ought to discuss some ground rules, in the conduct of the trial. The plaintiffs, I take it, will have witnesses; how many?

Mr. Belton: That is correct, your Honor. I want to raise this question because it is the same question I raised before, and that is, where do we now stand in terms of representing the people in light of the fact that July 22 has come and gone? I understand that statements were sent to the Court, we got a copy I think just this past Saturday. Also, in our further answer filed on July 10, we indicated there that there were approximately a hundred twenty-eight people who might be identified as members of the class. And it raises the question at this time, [27] where do we as counsel for the class, stand, and who are they?

The Court: Well, I think you represent the class except as to those who asked to be excused and there were very few of those. Then with respect to back pay, you also represent those who filed proper claims, and in one way or the

other there have been some eighty people who have responded to the notice, I think. So with respect to back pay, I think you represent them, too. I think they have specifically asked that you do so. So you represent the class with respect to the injunctive relief, the entire class; and such members of the class who have indicated a desire to file claims for back pay, you also represent them.

Mr. Belton: May I ask the Court another question: how does the Court propose to treat the statements contained in the further answer filed on July 10 in terms at least of the statements now appearing in that [28] document? I know that it was signed by one, only one of the named plaintiffs, Mr. Joe Moody, but we think that might be sufficient to conform with the Court's order that they be made under oath.

The Court: You are speaking in terms of a further answer that you filed?

Mr. Belton: Yes, your honor. What happened is that it's the answer that we filed with the Court in response to the Court's order that we give the specifics, and that type of thing.

The Court: Not a pleading but an answer to an interrogatory?

Mr. Belton: That is correct, your Honor.

The Court: And you want to know whether the verification of one of the parties satisfies the Court's requirement that they all sign?

Mr. Belton: Yes, sir.

The Court: I'm going to accept that verification for all.

[29] Mr. Belton: In the trial of the case, your Honor, to respond to your question, we do plan to call as many of the

seventy-eight people, or seventy-five people, that have claims as to back pay, as possible. We have asked some of them to come over and stay. Hopefully we can get to them tomorrow. In addition to these, your Honor, we do have a problem relating to several documents we'd like to introduce, those which have been identified as 9-A, 9-B and 10. We propose to put on some witnesses to testify with respect to those documents. We have, I think right now, about four of those. So we are talking roughly in the neighborhood of approximately eighty people.

The Court: Are you in position to give me your best estimate as to the time it will require you to develop your case?

Mr. Belton: We have been in a quandary because the Court did ask us to submit to the Court an estimate of the trial and it [30] would depend, your Honor, I think on how the Court is going to treat the severance issue and the severance motion. I think if the Court were to sever, we might be able to put our case on in two days, or within two days, I should say. If we are going into damages, I think we might be talking in the neighborhood of seven days.

The Court: And Mr. Lowden?

Mr. Lowden: If your Honor please, I would like to address myself to two points; I'm not sure I followed exactly what this group of some eighty people who signed a petition for back pay, we assume, your Honor is going to accept that, but we would like to note that several of the people who signed a petition for back pay, we assume, your Honor is going to accept that, but we would like to note that several of the people who signed that are deceased and we are just a little curious as to how they did that.

The Court: I'd be a little curious to see the signatures but I only meant to say, Mr. Lowden, that I would not require

these [31] seventy-three people, that I wouldn't require all to verify the claim under oath, that I would accept the verification of one of the named plaintiffs.

* * *

[153] JAMES ALFRED JONES, having been first duly sworn to tell the truth, testified as follows:

Direct Examination

Mr. Belton:

* * *

Q Are you present employed, Mr. Jones? A Part time employed.

Q And where are you employed? A Albemarle.

Q Is that the Albemarle Paper Company? A Albemarle Paper Company.

Q How long have you been employed by Albemarle Paper Company? A Employed August 11, 1952.

Q And in what position did you start in? A I went in as a laborer in the Kamyr [154] Department.

Q Could you briefly describe for the Court, Mr. Jones, the various jobs you've held at Albemarle since your initial employment, since you were first employed? A Well, I worked in the Kamyr thirteen years. The Kamyr produced pulp and we loaded it in box cars for shipment to Richmond or somewhere, they didn't sell it, I presume, it was shipped. And I worked there until the Kamyr shut down. From there they put me on the call roll and I worked in different places since then. On the digester, I've worked up there. And I've worked on the number five recovery, number five and six recovery, lancing flues.

And from there I would go different places where they

would send me whenever I was called in. Such as the paint crew, the maintenance, and also the service crew.

Q When you say that you presently work part [155] time now, what do you mean by that? A Well, just whenever they call me to work. If they call me to work today, if they see fit that they don't need me tomorrow they put me back on the board. They call whoever they want, if they would happen to call me and I'm not at home they call whoever they want the next time, which is the next man they can reach, and I might not get another call in a week or two weeks.

Q Now, I think you testified you worked in the Kamyr Department for approximately thirteen years? A Yes, sir.

Q Do you know the approximate year when that department was shut down, I think you testified? A Well, I was put on the board 1966 and they hadn't moved the machinery out at that time. We would go in there sometimes and run it, maybe one day this week, maybe two days the next week, and that would be it. It was on the way out.

[156] Q What was the race of the employees in the Kamyr Department? A You mean the people that worked in there?

Q Yes, were they white and black or just black? A All black but one, that was the operator, until they changed it to let some black operators in there; when it was almost going out they let the blacks come in and start operating it.

Q While you were in the Kamyr Department, did you ever perform any of the duties that the white operator performed? A No, I did not. I was just, whenever they would have some baling to do I would bale or maybe drive a fork lift at times, get two cents more in the hour.

Q When you were on the call board, how are you informed that you're being called to work? A When they put me on the board I wasn't [157] I was supposed to be at home, supposed to sit there and wait for a call.

Q Would they write you or telephone you or what? A Telephone me.

Q What is your educational background, Mr. Jones? A I completed the seventh grade and for the last two years I've been going to night school.

Q What school have you been going to? A Halifax Tech.

Q And what were you studying—any particular course? A Well, I'm studying reading which is American History, math and English, 2200.

Q Can you read and write now? A Yes, sir.

Q Did you ever have to do any reading and writing in the course of your work in the Kamyr Department? A No, sir.

[158] Q Have you had to do any reading and writing in the jobs that you performed while working off the call board? A No, no reading. Now, I have went to the supply room once or twice and checked out some oxygen and stuff like that. I think I did it twice.

Q What do you mean by checking out oxygen? A Well, you've got to go down there and fill out the—in other words, whoever you're working with gives you the charge number and you've got to go down there and fill out the slip and sign it in order to check it out. The record goes to the office, I reckon.

Q Mr. Jones, would you tell the Court whether there were jobs at Albemarle that you thought you were capable

of doing other than the job performed in the Kamyr Department where you worked and working on the call board? A Well, when the Kamyr was running some time they said they would have, the production [159] would be low, well, they would send me on the digester to work, to fill in, that was when it was hot before they put those evaporators up where makes those chips come down, we had to rod them down then, it as hot; and after the weather would get cool they'd send me over to number five to lance those flues when the Kamyr was down to let us make our time, to make up some time sometimes. I could have worked on the digester or either over there on number five or six or either in the maintenance where I worked off and on for the last year.

Q For the record, Mr. Jones, would you tell the Court what you mean when you refer to number four and five? A Well, that's a place, it's a large boiler. They get a certain portion of steam from that boiler and it makes a liquid that cooks the chips that's produced into paper, and that boiler, it's a big boiler that [160] makes liquid and steam, liquor and steam.

Q Have you ever requested a transfer or promotion to a job other than the Kamyr Department or off the call board since you've been there, in the last five years? A Twice. When they put me on the call board I went up there and filled out an application and I talked to Mr. Moore and I told him I wanted to fill out an application for a job, any job that come open that was regular. I didn't want the call board because I didn't think I could make it on the call board. And he said he would consider it. And later I went back and did the same thing and nothing never happened.

Q You say you put in a written transfer? A That's right. Not a transfer. I put in for, filled out an application

for a job because when they put me on the board I didn't have no job.

The Court: You just wanted some regular work rather than working on the call board? [161] A That's right.

The Court: You'd take anything if they had it? A (no answer)

Mr. Belton:

Q Now, do you see Mr. Moore in court today? A Yes, sir.

Q And he is the same man you talked to on these two occasions? That you referred to? A Yes, sir.

Q Mr. Jones, did you receive notice of the vacancies that existed in the various departments at Albemarle? A No, I did not. No, sir.

Q Did you know of any vacancies that occurred say for the last five years at Albemarle? A Not but two at the time, they were in the service crew.

Q And how did you learn of these? A Well, I happened to be working out there at the time Ed Lee retired, at the particular time. That's how I know of the vacancy [162] out there. And then I was working out there also when Clarence Powers retired and I knew there was a vacancy out there.

Q Directing your attention to the work you were doing in the paint crew, what did that job consist of? A Well, just painting. If you've got to chip down something, the paint, before you put the finishing cover on it, you just use a chipping hammer and a wire brush and clean it up before you prime it and then you go back later at a later date and paint it.

Q Have you ever seen whites perform this job? A Yes, that's the most that's in it is whites.

Q Now, do you know the department the paint crew come under? A No, sir, I really don't.

Q What kind of training have you had or did you have when you were assigned to work with the paint crew? A None whatsoever. I worked out there about, [163] I think it was three weeks, more or less, and I painted just like the rest of them. You couldn't tell my painting from nobody else's out there. It was a great big building and if anybody'd go by there and look at it if you can tell any difference you can beat me.

Q Did you ever receive any reprimands for defective work? A No, sir.

Q Now, you say that being on the call board you are subject to working on various jobs, is that correct? A Yes, sir.

Q Do you receive the same salary for the different jobs you work? A Everything except I worked in the boiler room one time unloading oil and my pay was different. That's the only time it's been different. The rest of the time it was plain laborer's pay.

Q I think you have indicated that you have [164] been on the call board since 1966, is that correct? A That's correct.

Q The one time that you worked in the boiler room— A What time was it?

Q I'm directing your attention to the time you said you worked in the boiler room, was your rate of pay higher or lower? A It was a little higher because I drew a little more

for the week, the three days I worked than I usually draw for three days.

Q Do you have an approximation, Mr. Jones, of how often you worked while you were on the call board? A How often I worked?

Q Yes, you said you worked part times, is it two days a week, three days a week or— A Up until 1970 I worked sometimes now a day a week but the year of 1970 I worked pretty good.

Q The year of 1970? [165] A Yes, sir.

Q And before that time you worked how often? A Some days one a week, some days, none a week, get holiday pay if I have a day coming up that I'm available for a call, if they call me on a holiday but if I wasn't available to come I wouldn't get it then, if I missed the call.

Q How did your income compare prior to 1966 on a yearly basis with your income between 1966 and 1970? A About $2500 difference in the year, maybe more.

Q Approximately $2500 less? A That's right.

* * *

Cross-Examination

Mr. Lowden:

* * *

[169] Q Is it not true, Mr. Jones, that in the year 1970, those were the highest earnings you ever had at Albemarle Paper Company? A Year 1970?

Q Yes. A That's right.

* * *

[173] ETHORIA JONES, having been first duly sworn to tell the truth, testified as follows:

Direct Examination

Mr. Belton:

[180] * * *

Q Would you give me your educational background? A I complete the eighth grade.

[183] * * *

Q Now, what position did this Mr. Mills hold with the Union? A He was President of the union at the time.

Q When you say union are you talking about the Halifax Local 425? A Yes, sir.

Q Do you see Mr. Mills in the courtroom today? A Yes, I see him.

Q After your conversation with Mr. Bryan, did you ask Mr. Mills to assist you in trying [184] to get these two letters clarified? A Yes, sir.

Q Did you have any conversation with Mr. Mills about the two letters on more than one occasion? A Yes, sir. The first time he said that, "you didn't take the test, they say you didn't take the test." The second time he said, "Can you give me any information as to what was on the test," said, "I might be able to check it for you." And then the next time we went into the office and he came in and they said, Mr. Bryan said, "well, we just don't have no record, I don't know how you got this notice." And that was the end of it. I didn't bother with it any more.

* * *

[187] Mr. Thompson:

Cross Examination

* * *

[188] Q And was it a black man who took your job back in 1966 then? A Yes, he was a black man.

[202] * * *

Mr. Woods:

* * *

Cross-Examination

Q Mr. Jones, when you went to Mr. Mills and asked his help in clarifying the meaning of these two letters, I believe you said Mr. Mills told you that he talked to the company about it and they reported to him that they had no record of your having taken the test at all, is that correct? A That's right.

Q And when you went to Mr. Mills you didn't [203] have the letters with you, did you? A No, I didn't have the letters with me.

Q You told Mr. Mills that you had them at home, didn't you? A I got the letter that he asked me for.

Q My question really is, Mr. Jones, did you ever show Mr. Mills the letter? A No, Mr. Bryan had it.

Q Mr. who? A Brown or Brain or whatever his name is.

Q Only to the company, you never showed it to Mr. Mills? A No, sir.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

Civil Action No. 989

JOSEPH P. MOODY, ET AL.,
Plaintiffs,
v.
ALBEMARLE PAPER COMPANY, ET AL.,
Defendants.

Proceedings before the HONORABLE F. T. DUPREE, JR., Judge, Presiding, United States District Court for the Eastern District of North Carolina, Wilson Division, Courtroom No. 1, Raleigh, North Carolina commencing at or about the hour of 9:00 o'clock a.m., July 27, 1971.

APPEARANCES:
(As heretofore noted)

* * *

[293] PHILMORE TAYLOR, having duly affirmed to tell the truth, testified as follows:

[305] * * *

Cross-Examination

Mr. Woods:

Q Mr. Taylor, you mentioned a school up at the hall—

A Yes, sir.

[306] Q Was that a school for learning how to read and write or to improve your ability in reading and writing? A That's right.

Q Did you attend the school? A That's right.

Q And was that at the union hall? A Yes, at the hall.

Q Local 425 Union Hall? A Yes, sir.

* * *

[314] MACK COY BOONE, having been first duly sworn to tell the truth, testified as follows:

Direct Examination

Mr. Chambers:

Q Would you state your name, please? A Mack Coy Boone.

[332] * * *

Cross-Examination

Mr. Woods:

Q Just a couple of questions, Mr. Boone. Workers on the call board are both black and white, are they not? A That's right.

* * *

[334] DAVID HARDING, having been first duly sworn to tell the truth, testified as follows:

Direct Examination

Mr. Belton:

Q Would you state your name, please? A My name is David Harding.

[344] * * *

Examination by the Court

The Court: Do you have the job now that you applied for or one just as good as the one you got when you first went there? A I have one just as good as when I went there.

The Court: Are you satisfied with the job you have now? A Yes, I am, if it was regular, I would.

[345] Th Court: Do you feel like these people have ever discriminated against you because you're black?

Mr. Chambers: Your Honor, with all deference, we'd like to interpose an objection.

The Court: All right. Overruled A No, I don't think so.

The Court: You don't think so? A No.

* * *

[361] JOHNNY EASTER, having been first duly sworn to tell the truth, testified as follows:

Direct Examination

Mr. Clayton:

Q What is your name, please. A Johnny Easter.

* * *

[367] Mr. Lowden:

Cross Examination

* * *

[368] Q Now, you were given a chance to go to first helper in the beater room in 1968, were you not? A Yes, sir.

Q That was a promotion, wasn't it, for you, or would have been for you? A Yes.

[369] Q And you said you didn't want to do that, didn't you? A I just wasn't available for that.

Q You couldn't do the job and you said you wanted to go back to your old job, didn't you, as brokeman? Isn't that right? A Yes, sir.

* * *

[370] Q Tell the Court how much education you have, Mr. Easter. A Second grade, not any.

* * *

IN THE UNITED STATES DISTRICT COURT

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APPEARANCES:

(As heretofore noted)

[389] * * *

[389] Mr. Belton: The next deposition, your Honor, is that of Mr. David Mills, identified as Plaintiffs' Exhibit No. 37. Mr. Mills was President of Halifax Local No. 425 when his deposition was taken on December 1967. (Deposition of David Mills identified as Plaintiffs' Exhibit No. 37, admitted in evidence.)

* * *

[Mr. Belton reading from the deposition of David Mills]

[394] * * *

"Q Is it true that the union has refused to request the company that these two lines of progression be merged? "A that is not true.

"Q Now is it true that you, during [395] "negotiations of '65, did not seek to have these lines of progression merged? "A That is not true, we did seek to have them merged.

"Q In 1965? "A In 1965.

"Q Would you state the consequence of your effort? "A We weren't able to get what we were asking for.

"Q Now would you state specifically what you were asking for? "A Well, we were asking that promotions be made first by department seniority and then by plant seniority which would have automatically done away with these two lines of progression.

"Q So that everybody in a particular department would be advanced according to seniority? "A That's right. Item number 8, union's [396] "agenda, 1965."

"Q Was this voted upon by the local? "A What do you mean, was it voted upon? Each individual item voted upon?

"Q You indicated that item number 8 in the union's proposals? "A That's right.

"Q Was submitted to the company? "A It was submitted to the company.

"Q Which requested that employees be advanced according to seniority and department? "A Seniority first by the department, and secondly by the plant.

"Q And my question is, was this particular proposal voted upon by the local union at one of its union meetings? "A No one particular proposal was voted upon.

"Q Was the overall thing voted upon? "A The overall contract was, the overall agenda, the overall contract, the [397] "package that we came out with had to be voted on in order to ratify the contract.

Mr. Belton: And Mr. Mills, continuing his explanation: "The agenda was read to the body before it, before we went into the negotiating. It was approved by the body and then after negotiation when we figured we got the best package we could get, it was again presented to the body and ratified by the membership.

* * *

"Q Now, you indicated that you presented this proposal to the company and that it was rejected? "A That's right.

[398] * * *

"Q Now would you state why you determined not to go into it any further in trying to obtain this kind of promotion policy? "A We, as I stated before, came out with what we thought was the best possible settlement we could get short of strike, presented this, what we had come up with to the body, the union membership voted to [399] "accept it rather than to strike, and in those cases the union officers have no say-so, it is put to a vote and a majority rules.

[403] * * *

"Q Now, what did the union do to see that the employees affected by the installation of the power plant were

accorded the same kind of rights? "A To the best of my knowledge they were accorded the same kind of rights.

* * *

[414] "Q Did the union ever seek to get the company to allow the Negro employees who had the same seniority as white employees to develop education to transfer to those particular positions or lines of progression? "A I believe I stated before, I had made on our agenda that we try to eliminate the particular lines of progression and make promotions departmental first and secondly—"

Mr. Belton: ". . . by plant," it should be, and continuing the answer

"A . . . which would be in effect what you're saying.

"Q Are you stating that this would have eliminated the use of tests? "A Yes, it would."

* * *

[Mr. Woods: reading from the deposition of David Mills]

[416] "Q Now, with respect to transferring from the general call board, was it that he was just hired from the general call board or that he, how would he transfer from the general call board? "A That is something that I'm not, information that I don't have, that is handled entirely through the Personnel Department of the mill, and the union has absolutely nothing to do with this."

Mr. Woods: Being transferred from the general call board.

On page 106 through 124, he is examined extensively about the union's job steward system and he points out that there is usually a job steward from each department selected by the employees in that department. On some occasions when there is no individual who wants to be job

steward in the department the general officers of the union will act [417] as steward for that department. There are Negro job stewards.

In his reading from page 146, counsel for plaintiffs omitted the balance of an answer beginning at line 7 on page transcript 146. The line of question dealt with what does the union do to see that the employees affected by the installation of the power plant were afforded the same kind of rights. His first answer was:

"A To the best of my knowledge they were accorded the same kind of rights.

"Q Would you state how you formed that opinion?"

Mr. Woods: Mr. Belton read this part of the answer, but not the remainder of it:

"A They were reduced in force. There was no place for them, they had bumped down as low as they could go, and they were in turn put back on the call board. The same thing happened in these other lines of [418] "progression. If there was a man, the difference there being that in the power plant the lower jobs were eliminated; in the shipping department by the installation of machinery will replace the people in a higher position in the line of progression and these people had a right to bump the guys out below them, the bottom man went back on the call board or quit, as you have two of them."

The Court: He said that was true with respect to the other lines other than just the power plant?

Mr. Woods: Yes. Whenever a cut-back or curtailment occurred. In any line of progression.

Counsel also skipped pages 150 to 159. I call attention particularly to transcript page 154, line 24, dealing with the call board operation:

"Q Now, while he is on the general call board, if there are temporary [419] "positions available, is he recalled according to seniority? "A Not according to seniority, no.

"Q How is that determined? "A That is determined by the company, following his qualifications or his experience on other jobs.

"Q What if a temporary position opens up in the position he just left? "A Then the job is his.

"Q Temporarily? "A Temporarily, as long as the job runs.

"Q That is the contract that you operate under? "A Yes.

"Q And if a temporary position opens in another department? "A He can fill that position in another department and still maintain his rehiring rights on the job that he left, and that he was demoted from.

"Q Would he be recalled though to that [420] "particular department according to seniority? "A Yes, he would."

Mr. Woods: Now, counsel omitted transcript 169, beginning with line 15:

"Q Have you ever processed to arbitration the complaint or grievance of a Negro employee other than the plaintiff, Moody? "A Yes.

"Q Would you state the name of this employee? "A James Alfred Jones."

Mr. Woods: He was one of the witnesses here today.

"Q When was that? "A The last one that went to arbitration. I don't know exactly how long it's been. It's been some time this year.

"Q Was that in this year? "A Yes.

"Q You have records of that? "A Yes.

[421] "Q What was the disagreement? "A It was a dispute between him, it was a dispute between Jones and a watchman over a telephone conversation. He was given time off for not reporting as instructed and we filed a grievance on it as he was unjustly suspended.

"Q Do you know of another Negro whose complaint or grievance was processed to arbitration? "A This year.

"Q At any time. "A At any time, not that I recall, but I would like to add this, that neither has there been any white person who has gone to arbitration this year.

"Q But you have had them in years prior? "A In years prior to this time, yes. Since I have been in office, I'd say percentage-wise, most of them have been Negroes."

Mr. Woods: Counsel read most of page 180, [422] except for the bottom part. This deals with the subject of merging or eliminating lines of progression, line 7:

"Q Did the union ever seek to get the company to allow the Negro employees who had the same seniority as the white employees to develop education to transfer to those particular positions or lines of progression? "A I believe I stated before, I had made on our agenda that we'd try to eliminate the particular lines of progression and make the promotions departmental first and secondly by plant—"

Mr. Woods: I think he means by plant.

And continuing:

"A . . . which would be in effect what you're saying.

"Q Are you stating that this would have eliminated the use of tests? "A Yes, it would."

[423] Mr. Woods: And this is the omitted portion I'm reading now:

"Q As conditions—

The Court: Mr. Belton did read that.

Mr. Woods: Yes, sir, but I'm now reading what he didn't read.

The Court: All right.

Mr. Woods: "Q As conditions for employment? "A Not for conditions; we didn't have to ask for conditions for employment. We asked only for the incumbent employees . .

"Q The proposal you submitted then would have affected only those employees then in the mill at that time? "A That is true, because the union has no jurisdiction over new employees and has no say-so on who the company hires."

Mr. Woods: Mr. Belton summarized pages 181 and 182, dealing with Ethoria Jones' complaints about testing. I would like to read the [424] significant answers there; page 181, line 6:

"Q Has the local processed any grievance about the particular tests that are now used by the company? "A No, we haven't.

"Q Has the local investigated the particular tests now being used? "A We've investigated several claims about the tests.

"Q What were those claims relating to? "A Well, some, Joe, your client there, —"

Mr. Woods: Meaning your client, Joe Moody.

"A . . . is very well familiar with one of them and I could relate to you Ethoria Jones on the wood yard, in the wood yard department. He claimed that he took the test and passed it and that he was told that he took the test and passed it he would have to go back on the call board and lose all his seniority in his line of progression he was in to later get on another job."

[425] Mr. Woods: Page 182, beginning line 10, Mr. Mills, continuing:

"Jones told me that he took the test and passed it and that he was told by Mr. Jordan that in order to get into another line of progression that he would have to go back and on the call board and lose his seniority in the line of progression that he was in and that was the reason that he didn't want to go—that he wouldn't accept a job in another line of progression. This I investigated extensively. In fact, your client, Mr. Moody, was in the meeting with Mr. K. D. Running, Mr. Jim Palmer, Bob Herndon, and I don't believe I brought that out, and this subject was brought up, it was brought to the company's attention that we were under the impression that if an employee took the test that he could stay on his present job and [426] "maintain his seniority in that job until a job in the another line of progression came open and then he could transfer without being put back on the call board and the company agreed that this was right, so it was his right to do this.

"Q Did you ever determine whether Mr. Jones had the tests? "A We determined that he didn't ever take it.

"Q Did you ever check any correspondence you received in that respect? "A I have never seen any correspondence he received in reference to it, I, therefore could not have checked it.

"Q Did you talk with anyone who might have taken the test with him? "A Yes, I talked to one of the people who he said he took the test with.

"Q And who did you talk to? "A That was one of the Hardings, I've [427] "forgotten. C. I., I believe it is, his initials, C. I. Harding. C. I. I believe is his name. Now, Jones told me he took the test at the same time Harding did and Harding said he didn't."

Mr. Woods: That is all, your Honor.

The Court: All right, sir. Do the company attorneys desire to call attention to any further excerpts from Mr. Mills' testimony?

Mr. Lowden: I would just like to continue on a little with the Ethoria Jones matter. And beginning at the bottom of page 184, line 24:

"Q Now, how did you determine that Mr. Jones never took the test? "A Well, you referred a minute ago, you cut me off real quick about this correspondence. Mr. Jones told me that he took the test and passed it, and then he told me later that he went, that the company notified him that he took the wrong test and he would have to take it over. I talked to [428] "the Personnel Manager and he said no, that wasn't true, and so I reported this back to Joe, to Ethoria and to Jeremiah Webb. Jeremiah was the one who came to me with it for Ethoria. I checked it out and he came back later and told me that he had a letter from the company stating that he did take the test, that he did pass and my very words that I sent back to him was, "you bring me the letter and I'll clean that Personnel Department out." So, as of today, I have never seen the letter. I assume that he did not have the letter."

[430] * * *

The Court: All right, sir. Mr. Woods, what do you say in summary you would want the Court to find from your client's deposition?

Mr. Woods: I believe Mr. Mills' testimony establishes that the union bargained as strongly as it could to improve the system and to change the seniority system; that despite its efforts to change the departmental, the job seniority system, and provide greater protection to the more senior employees, black and white, the union body refused to make this a strike issue and consequently was unable in 1965 to make the changes that subsequently were made in 1968.

[431] I think the testimony of Mr. Mills also shows that the union investigated, sympathetically listened to and attempted to do something about all formal grievances brought to its attention whether by black or white employees.

* * *

[463] Mr. Chambers: Exhibit 41, beginning on page 95 of the deposition of Mr. Arnold B. Brown, he states that he is the representative of the Union, the International, with headquarters in Richmond, Virginia, and that he is Vice President and Legal Director or was Vice President and Legal Director;

* * *

[Mr. Woods: reading from the deposition of Arnold Brown]

[467] * * *

Mr. Woods: At transcript page 109, line 18:

"Q What was the union's position with reference to the Wonderlic test? "A We were opposing any testing at the time.

"Q Why were you opposed to any test? "A Well, we felt that what we had agreed upon under the four-year program was adequate—"

Mr. Woods: Four year program for apprentices.

"A . . . on the basis of the early agreement by someone else that had been there ahead of me.

"Q Was the test requirement instituted by the company? "A Yes."

[468] Mr. Woods: At transcript page 159, the bottom of the page, cross-examination by Mr. Lowden:

"Q Mr. Brown, looking at the lines of progression chart, during the time you were there as the International representative, during those years, does the union have anything whatever to do with who begins his employment in the classifications, chain operator, for instance, in the wood yard crew? "A Do we have anything to do with who gets the job?

"Q Yes, in the first instance? "A No, sir.

"Q Do you have anything to do with who gets the job of laborer there, to see who is first employed in that job? "A No, sir.

"Q Do you have anything to do with who gets the job in the bottom classification [469] "in any of these lines of progression? "A No, sir.

"Q Did you at any time while you were the International representative servicing this local and this contract,

either expressed or impliedly, make an agreement that any person, white or black, would get any of these starting jobs; did you agree for instance that whoever got the job of crane operator in the wood yard, either expressed or implied, would be either white or colored? "A No, sir.

"Q Did you do that for any of the starting jobs, expressed or implied? "A No, sir. Unless some employee filed a request for transfer and we felt that an employee was qualified and you have given it saw to a new [470] "hiree from outside, then we might complaint.

"Q But you would complain if you thought he was qualified, whether or not he was white or colored? "A Yes, sir.

"Q And regardless of which line of progression it was? "A That is correct.

"Q Have you ever heard of any agreement either expressed or implied, between the International, the local union down there, any agreement between them and the company that all employees say in the paper machine line of progression in the B paper mill will be white people? "A No, sir."

Mr. Woods: Skipping then to page 165, cross-examination by Mr. Ledford:

"Q Mr. Brown, you have testified that you are Vice-President—"

[471] Mr. Woods: And skipping to line 14, page 166:

"Q Now, I will ask you did Mr. Irby as International representative have the authority to require the members of local 425 either to ratify or disapprove of this particular contract? "A None at all.

"Q Do you as the Regional Director have the authority to require the members of local 425 to approve or disapprove of any particular contract? "A None at all.

"Q Is there any officer to your knowledge in the Union International that has the authority to require the membership of any local, particularly local 425, to approve or disapprove any particular contract? "A None that I know of.

"Q Do you as Vice President and Regional [472] "Director of Region No. 4 have any rights or authority to require or forbid the defendant company to establish any standards of competence or qualification in the employment of any person? "A None at all. You are talking about new employees?

"Q Yes, new employees. "A None at all.

"Q Does any member of local 425 have any such authority? "A No, they don't.

"Q Are you aware of the so-called 'right to work' laws in North Carolina? "A Yes.

"Q Do you know how long an employee is on probation without Albemarle Paper Company before they are entitled to any of the protective provisions of a contract against this charge? [473] "A It's spelled out in the labor agreement. I don't know exactly what it says but it may have been reduced or increased since I last serviced the local union. There is a period, either forty-five, sixty or ninety days —"

Mr. Woods: That is probationary period before the union can do anything with reference to that.

"Q And under which a company can discharge an em-

ployee without the union having any rights to file a grievance for such discharge? "A That is correct."

Mr. Woods: There is some further re-direct examination by Mr. Chambers and pick up again, Mr. Ledford examining on cross at page 177, line 5:

"Q I direct your attention again to Sec. 8 of the contract heretofore introduced by the plaintiffs, [474] "wherein management has reserved unto itself certain rights. Does the union have any way of reducing these rights reserved by the company except by striking? "A Only through striking and collective bargaining.

"Q If collective bargaining is not successful, would they have any alternative except to strike, I mean as a way of reducing those rights reserved by management? "A That would be the only alternative.

"Q Would you as Vice President and Director of Region 4 have the authority to direct the members of local 425 to engage in strike activities without their consent? "A No, the Constitution provides that they must vote by a secret ballot, two-thirds of the majority, before they can go on strike, and before they can go on strike they must [475] "secure the agreement of the Executive Board of which I am a member.

"Q No matter how the Executive Board might feel, it couldn't direct a strike unless and until two-thirds of the membership voted to go on a strike? "A That is correct.

"Q Is there any officer of local 425 to your knowledge who could direct that a strike be conducted unless and until two-thirds of the local membership voted to engage in such strike? "A No local officer has any union authority to direct anyone to go on strike without secret ballot of the

majority of those voting for a meeting called for that purpose."

Mr. Woods: And that concludes, your Honor, the excerpts from Mr. Brown's testimony, on the [476] basis of which I would ask your Honor to find in substance that the union exerts and has no authority to exert any control over the hiring of employees in the first instance, by the employer, or of the testing qualification procedures used by the employer in hiring employees, and that the only way the union has to change contract procedures or achieve concessions from management is through the device of collective bargaining or, in the final alternative, striking, and that a strike cannot be voted under the union's Constitution by any one except a two-thirds majority of the members of the local union by secret ballot.

* * *

[Mr. Lowden: Reading from the deposition of Arnold Brown]

[478] * * *

"Q Is it your testimony that some Negroes were questioned by the union as to their qualifications? "A Well, their argument was taken into consideration by the union in an effort to get the company to agree to assign them to some of these jobs in the new power plant. I don't know that we got to the point of saying to the company that "x" number of colored employees should be transferred to the new power plant because we didn't use colored versus white. But I do know that we discussed with these people their qualifications and with my experience in a paper mill, [479] "the people that I talked to, the colored employees were certainly

obviously not qualified to take one of these jobs in the power plant."

[503] * * *

(Deposition of Curtis V. Bullock, identified as Plaintiffs' Exhibit No. 40, admitted in evidence.)

[506] * * *

Mr. Woods: No, just to point out that Mr. Bullock ceased to be connected with the Local union in the year 1965, your Honor.

[534] * * *

Mr. Belton: At this time I would like to have marked for identification and tender Plaintiffs' Exhibit No. 32, which is the deposition of Mr. John E. Bryan, Jr., who was the Industrial Relations Manager at the plant since 1963, I believe; at the time this deposition was taken in 1967.

* * *

[Mr. Belton: Reading from the deposition of John E. Bryan, Jr.]

[555] * * *

"Q You do not have a written job description at Albemarle, is that correct? "A Not for the bargaining unit at Roanoke Rapids.

"Q Do you know whether while you were at or might have been with the company, whether there had been a job study done of the bargaining [556] "unit of jobs? "A What do you mean by job study?

"Q To determine job contents. "A I don't know that I understand your question. I don't think they have, in fact, I'm sure there hasn't been anybody studying the contents of the jobs with a view toward writing a job description or anything like that, there have been studies of what people do in terms of, by Industrial Engineers, to see whether we should install this piece of equipment or that and better improve the performance of the plant, or something like that.

* * *

[Mr. Thompson: reading from the deposition of John E. Bryan, Jr.]

[561] * * *

"Q Since the Wonderlic has been instituted, have you compared the performance of those persons in the lines, skilled lines of progression, who have not taken the Beta and the Wonderlic and do not have a high school education? "A Not in a formal study sort of way but as I said, all the reports that we [562] "get show that we are getting good people which we feel that we have a right to get in view of the fact that we are paying by far the highest wages in the area, much over and above what we would have to pay in a free, competitive labor market. Our average wage, in fact, our starting wage, is well above, I mean well above the average, probably, of this whole community."

The Court: Mr. Woods, your people are doing a good job over there, apparently.

Mr. Woods: We think we are, your Honor, for everybody.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

Civil Action No. 989

JOSEPH P. MOODY, ET AL.,
Plaintiffs,

v.

ALBEMARLE PAPER COMPANY, ET AL.,
Defendants.

Proceedings before the HONORABLE F. T. DUPREE, JR., Judge, Presiding, United States District Court for the Eastern District of North Carolina, Wilson Division, Courtroom No. 1, Raleigh, North Carolina commencing at or about the hour of 9:00 o'clock a.m., July 29, 1971.

APPEARANCES:
(As heretofore noted)

* * *

[610] ERNEST GARNER, having been first duly sworn to tell the truth, testified as follows:

* * *

Cross-Examination

[618] Mr. Lowden:
Q Mr. Garner, how far along in school did you get?
[619] A About the second grade.

* * *

[620] Q And shortly after that there was a vacancy in the next higher job, isn't that right, I believe the chip unloader? A Right.

Q And they didn't give you that job, did they- A Right.

Q They said you were not qualified, isn't that true? A They said I was not qualified, hadn't had the proper training.

* * *

[622] Q On the chip unloader job don't you have to be able to read and write? [623] A That's what they say.

Q Can you read and write? A Very little.

* * *

Cross-Examination

[624] Mr. Wood:

Q Mr. Garner, I gather that you learned to read and write at the union hall school? A That's right.

[625] Q And how long did you attend that school? A I attended right good when I first started and then I got away from it, I was working fourth shift then and I'd get some nights and sometimes I'd go in the morning when I'd get off, sometimes I'd go in the morning when I was working from three to eleven.

Q Until you went to that union hall school you couldn't read or write at all? A Well, couldn't do too much, no, I can do pretty good now.

Q And your present rate of pay as a number two chipper operator is $3.10 an hour? A Is what?

Q Your rate of pay. A Number two chipper?

The Court: Your job now, do you make $3.10 an hour? A Three-twenty-three.

Mr. Woods:

Q $3.23 an hour? A Right.

* * *

[634] WILLIE HENRY MASON, having been first duly sworn to tell the truth, testified as follows:

Direct Examination

Mr. Belton:

* * *

[643] Q Can you read or write, Mr. Mason? A Not too good.

* * *

Cross-Examination

Mr. Thompson:

* * *

[644] Q You believe you can. Now, in that type of work is it not true that they have to work with various types of manuals put [645] out by the manufacturers of different types of equipment? A Yes, but on those jobs that they have supervisors and leadmen and engineers and a lead man on every group.

* * *

[646] Q And in order to maintain this equipment you have to be able to read those manuals, don't you? A You have somebody to do that.

* * *

[648] Mr. Thompson: Your Honor, counsel for plaintiffs have indicated they would be willing to stipulate that this witness cannot read or understand—he cannot read the documents which I have identified as Company Exhibit No. 30.

The Court: Well, I thought he demonstrated a moment ago that he didn't know what they were. I got that impression. That's right, isn't it? A Yes, sir.

The Court: If I understand this witness correctly, you had a job in the maintenance department— A Yes, I did.

The Court: And they put you out of there because you are a black man? A Yes, sir, correct.

The Court: And that was nineteen years [649] ago, or thereabouts? When that happened? A '52 or '53, somewhere along there.

The Court: And you'd like to go back in there? A Yes, I would.

The Court: And if they have a job like the one that you had back then, of course, you wouldn't need any training because you already know how to do that job, don't you? A Yes, sir. Correct.

The Court: But if you went on a job that required you to read and write, you would want somebody who could read and write to explain that part of it to you? A I've worked longer than somebody come up like that, they have them all over the mill like that.

* * *

Cross-Examination

[650] Mr. Woods:

Q Mr. Mason, you said just after the Civil Rights bill was passed you went to Mr. Mills, the President of the local

union, and asked him to help you get transferred back to the maintenance department, is that right? A Yes, I did.

Q And didn't Mr. Mills go to the Personnel Manager in your behalf to try to get you transferred back there? A No, sir, I don't remember it.

Q You don't remember that? A No, sir, I don't.

[651] Q Didn't Mr. Mills tell you he would do what he could to help you? A He told me that, yes, sir.

Q As a matter of fact, the last union election, didn't you nominate Mr. Mills for president of the local? A Yes, I did that.

Q And do you hold any union office, Mr. Mason? A Well, I'm the shop steward in my bunch.

Q You're steward, shop steward? A Yes, sir.

Q Are you also a sergeant-at-arms at the union meetings? A Yes, sir, I am.

Mr. Woods: Thank you, sir.

* * *

[652] Mr. Clayton: Your Honor, we wish to designate as Plaintiffs' Exhibit No. 59 the deposition of one Theodore Daniels, dated November 1966.

* * *

[655] Mr. Lowden: [reading from the deposition of Theodore Daniels] Then on transcript page 91 he stated the only discrimination he encountered in being employed there was when we asked him to take a test, asked him if he wanted to take a test back in [656] 1964.

* * *

[708] Mr. Clayton: Your Honor, the plaintiffs now designate the Plaintiffs' Exhibit No. 60, the deposition of Henry Hill, dated November 1966. His deposition appears beginning on page 108 and continues to and including page 123.

* * *

[Mr. Thompson: Reading from the deposition of Henry Hill]

[715] "Q Did you ever do the work of the first helper? A No.

"Q Did you ever do the work the first helper was doing? A No.

"Q Did you ever do the work the beaterman was doing? [716] A No."

Mr. Thompson: I'd like also to go to page 113 where this witness testified that he could not read, and at transcript page 114 and transcript 115 where he said he was given an opportunity to take the test but declined to do so and at page 115, eight lines down:

"Q How many years of education do you have, Mr. Hill? A Not any.

Mr. Thompson: On page 123, this witness testified that in order to do the work of beetleman or helper you had to be able to read written orders.

I would like to summarize by saying that the transcript indicates that this witness' job was not being worked for a period of time and that the other jobs that were above him required qualifications that he did not have.

* * *

[717] Mr. Chambers: Your Honor, we would like to designate as Plaintiffs' Exhibit No. 61 the deposition of Mr. Arthur Mitchell.

* * *

[719] Mr. Thompson: Your Honor, have we finished with Mr. Mitchell's deposition?

With respect to this deposition, at page 129, the witness testified that he felt he had been discriminated against when the brokeman's job was closed down and he went back to the call board for a period, and then he later testified that he returned to the job of brokeman.

At page 132, in the middle of the page:

"Q Mr. Mitchell, can you read and write? A Not much.

[720] "Q Outside of yourself, do you know other Negro employees who have been discriminated against because of their race? A No, I don't."

Mr. Thompson: He was talking about himself when he went back to the call board during this period of time.

The Court: His testimony was to the effect that closing down the job of brokeman discriminated against him.

Mr. Thompson: That is correct. And the other thing at transcript page 131, he testified that his education did not go beyond the second grade.

* * *

[721] CLARENCE HIGH, having been first duly sworn to tell the truth, testified as follows:

Direct Examination

Mr. Belton:

* * *

[722] Q And what is your educational background? A Fifth grade.

Q Can you read and write? A Yes, sir.

Q Mr. High, did you take the tests that were offered at Albemarle? A Yes, sir.

Q Do you know whether you failed or passed them? A I failed the tests.

* * *

[821] Mr. Thompson: At this time, your Honor, we would like to offer the deposition of Mr. Nicholas C. Vrataric, which was taken on April 29, 1970. That is marked I believe as Company Exhibit 18. And I now would like to read some excerpts from that deposition.

(DEPOSITION OF MR. VRATARIC, identified as Defendant Company's Exhibit No. 18, received in evidence.)

Mr. Thompson: Mr. Vrataric testified that he has been associated with the paper industry for about thirty years and that this was primarily in the northern part of this country; and that he had negotiated many, many labor contracts and specifically has had specific negotiations concerning seniority in labor contracts.

* * *

[Mr. Thompson: Reading from the deposition of N. Vrataric]

[824] "Q Is the line of progression which you see in the Appendix F, B paper mill department, is that in any way unusual in your opinion? A It's not unusual.

* * *

[839] Mr. Thompson: One of the contentions of the plaintiffs in this case is that the employees could not transfer from one department to another, and so I am trying to get from this witness who is testifying that in the paper industry it is not common to transfer from one department to another; that it is very common to stay in that department in which you are initially hired. And I was just trying to show that [840] that was an industry practice and that was the purpose of the question.

The Court: Do you say the evidence of this witness in response to the question to which the objection has been interposed tends to show?

Mr. Thompson: Yes, it does.

The Court: Well, the objection is overruled, go ahead.

Mr. Thompson:

"A Well, you call it a 'penalty,' we don't call it a penalty, we call it an employee's desire to get into a new line of progression where eventually he may get to a better job. In effect it is a penalty because he is sacrificing whatever rate he had in the old department to go to the better job in the new department at the rate of the job. I might add that this does occasionally happen, especially with new [841] employees that might be hired by a company and placed in a department where the vacancy was, and then when he finds out the job opportunities in the plant, for instance if he was hired in the beater room, he might want to eventually go on

a paper machine, or he might want to go into the power plant because that is where his interests are, and then he might exercise the bidding rights to get in there but he recognizes he has to sacrifice his rate to do that.

"Q This is common in the industry? A Yes.

"Q You have negotiated with companies when the subject of transfer came up? A Yes.

"Q Is it not normally true that companies resist liberal transfer [842] provisions? A Definitely.

"Q Would you tell us why they do that? A They don't want to waste the training they have in individuals in the department he is already in, and begin giving him a complete new training program, begin him in a new training program in a new department."

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

Civil Action No. 989

JOSEPH P. MOODY, ET AL.,
Plaintiffs,

v.

ALBEMARLE PAPER COMPANY, ET AL.,
Defendants.

Proceedings before the HONORABLE F. T. DUPREE, JR., Judge, Presiding, United States District Court for the Eastern District of North Carolina, Wilson Division, Courtroom No. 1, Raleigh, North Carolina commencing at or about the hour of 9:00 o'clock a.m., July 30, 1971.

APPEARANCES:
(As heretofore noted)

* * *

[852] DR. JOSEPH TIFFIN, having been first duly sworn to tell the truth, testified as follows:

* * *

[856] Mr. Thompson:

[Direct Examination]

Q Would you state your name, please? A Joseph Tiffin.

Q Where do you reside, Dr. Tiffin? A West LaFayette, Indiana.

Q What is your profession? A Industrial psychologist.

Q Tell us where you were educated, Dr. Tiffin. A I took a bachelor's degree at South Dakota in 1927, a master's at the University of Iowa in 1928 and Ph.D. at Iowa in 1930.

Q Have you ever taught industrial psychology? [857] A Yes, I have, sir.

Q Where did you teach that? A Purdue University.

Q And for what periods of time? A Since 1938 until the present, thirty-three years.

Q Have you ever written any books in this field? A Yes, I have, sir.

Q Would you name those books, please? A I wrote an introductory text in psychology about 1939, I wrote the Industrial Psychology Text that came out in 1941, first edition, it is now in the fifth edition.

Q And have you ever done any consulting as well as academic? A Yes, I have, sir.

Q Could you briefly list some of the firms with which you have consulted? A A few of the firms with which I've had validating test study work include International Paper Company, the Meade [858] Corporation, the Marathon Paper Company, now part of American Can; Bethlehem Steel Company, Gulf States Paper Company, Longview Parker Company and the A. C. Nielson Company.

Q And have you been doing consulting work in this field of industrial psychology ever since you have been with Purdue University? A Yes, I have, sir.

Q Have you ever written any articles in addition to your books? A Yes, sir.

Q And what are they? A I've written a total of 141 articles, and this including the five editions of the book, since and during my professional career.

Mr. Thompson: I would like this marked as Company Exhibit No. 22, for identification. (Dr. Tiffin's resume identified as Company Exhibit No. 22.)

Q Dr. Tiffin, would you identify Company Exhibit No. 22? [859] A That is my vita, the story of my professional life.

Q Was that prepared at my request? A Yes, it was, sir.

Q And does the information contained on Company Exhibit No. 22 accurately reflect your professional background? A Yes, it does, sir.

Mr. Thompson: You Honor, I would like to offer Company Exhibit No. 22 into evidence as Company Exhibit No. 22.

(Dr. Tiffin's resume, identified as Company Exhibit No. 22, received in evidence.)

Mr. Thompson: I would like to point out to the Court that Exhibit 22 has been prepared to eliminate some of the preliminaries of this particular witness; it is a very extensive background; and we can just get right into the real issues in this case.

The Court: Very well.

Mr. Thompson: At this time, your Honor, I'd like to offer this witness as an expert in [860] the field of industrial psy-

chology and industrial testing and all of my subsequent questions will be based upon the Court's declaring him to be a qualified expert.

The Court: All right.

Mr. Belton: Just one question, if I may.

Q Dr. Tiffin, I was noticing from your vita sheet that you have quite a number of publications, do you know the date of your last publication? A Yes, sir. This is in two lists. The Purdue publications, through page nine, the last publication is No. 115, that was in 1971.

Q Thank you.

The Court: Very well, you may proceed.

Mr. Thompson:

Q Dr. Tiffin, are you familiar with the guidelines of the Equal Employment Opportunity Commission? A I am, sir.

[861] Q Are you also familiar with the guidelines put out by the office of Federal Contract Employment? A Yes, sir.

Q Now, when did you first become associated with the Albemarle Paper Company? A I'd say about three months ago, roughly.

Q Would you explain for what purpose you were retained? A To attempt to validate some personnel tests being used by the company.

Q Dr. Tiffin, are there various methods of trying to validate tests? A Yes, there are, sir.

Q Would you explain the various methods? A Well,

there are two basic methods, called the predictive method and the concurrent method.

Q What is the predictive method? A The predictive method, you give a test to a whole group of people who are hired and then you hire them without regard to test [862] score. And after they have been on the job for a long time you get some measure of job performance. Then you go back to correlate the score made at the time of hire; it's a long-winded method. It takes time, all kinds of time.

Q What is the concurrent method? A You go into the department at a given time, you get gradings and job performance of the employees in that department, then you ask them to come off to one side and you give them the test. And then you correlate the test score right then with success on the job. It's a much more rapid way to handle it.

Q Did you conduct a validation study at Albemarle Paper Company. A By the concurrent method.

Q What tests was Albemarle Paper Company using at this time? A Three tests, Wonderlic A, the Wonderlic B and the Beta.

[863] Q Would you briefly tell us about the Beta test and what kind of test that is? A The Beta test is a non-language culture-fair test.

Q What is the origin of that test, Dr. Tiffin? A It came out during World War I.

Q For what purpose? A To measure the mental ability of illiterates.

Q Would you briefly tell us about the Wonderlic test, Dr. Tiffin? A The Wonderlic was developed by E. F. Wonderlic based largely upon the Otis self-administered test

of mental ability. There are five forms of that test. It is a very widely used test.

Q You say it's widely used, does that mean in the industry it's used frequently? A What's that again, sir?

Q You stated it is a widely used test, are there many companies that use the Wonderlic? A A great many, that's right.

[864] Q When you proceed to conduct a validation study for Albemarle, when you started this study, will you describe how you went about it, the mechanics of working out a concurrent validation study? A Well, we looked over the various progression lines.

Q Do you have a copy of those lines of progression with you A Yes, I do.

Mr. Thompson: I would like to have this marked as Company Exhibit No. 3 for identification, the validation study.

(Validation Study identified as Company Exhibit No. 3.)

Mr. Thompson:

Q Dr. Tiffin, do you have a copy of those lines of progression before you? A I do, sir.

Q And you also have a copy of your validation study? A Yes, sir, I do.

[865] Mr. Thompson: For the information of the Court, your Honor, the lines of progression are attached to the joint exhibit and he's going to refer to both the lines of progression and the validation study.

Mr. Lowden: Does the Court have a copy of the lines of progression before it?

The Court: That is attached to the stipulations of fact.

Mr. Lowden: I think you will find it easier just to have this.

The Court: I will, and thank you very much.

Mr. Thompson:

Q Dr. Tiffin, I believe you stated that you used the concurrent method of validation? A Yes, sir.

Q Now, looking at the lines of progression, would you explain how you went about conducting the validation study? A Well, we took small groups of people at about the same job level in the progression line and those men were then rated by [866] their supervisor in overall job performance, the ratings being made on job performance only, not personality, not attitude, those things were avoided in making the rating; these tests are not supposed to measure a guy's attitude, they measure his background information and skill for the job. So we took these groups, the first ones I think were the caustic operators and the lye kiln operators, and they were rated by their supervisors; two ratings for each man, incidentally, average of two ratings as a measure of job performance.

Q You say two ratings, would that be Carey versus Bob and Bob versus Jim? A No, there are two different raters, two different supervisors.

Q All right, go ahead and explain how you grouped the jobs. A Then the next group we took was the pulp mill department, recovery operator, [867] first helper; those were considered to be jobs of about the same skill level.

Q Now, I notice, Dr. Tiffin, on Company Exhibit 3, the validation study, you took some of these jobs from the top of the lines, would you explain why you did that? A What's that again, sir?

Q I notice in your study that some of the jobs which you ran the study on were toward top of the line of progression, would you explain why you did that? A Because those are the jobs to which these men will go if they stay in the progression line long enough, and both the EEOC guidelines and the OFCC guidelines make a test not against entry jobs but against jobs above the entry level, assuming that within a reasonable period of time the men will move into these jobs.

Q Now, did you have a meeting then with Mr. Moore to decide how you were going to proceed? [868] A I did, sir.

Q And would you tell the Court what you told Mr. Moore to do in conducting these tests? A I asked him to spot a group of men in each of these progression lines and have them rated by their supervisors and send me those ratings.

Q Were those ratings sent to you? A They were, sir.

Q And where were they sent? A At Purdue University.

Q Were test scores also sent to you? A Yes, sir.

Q Where were they sent? A Same place.

Q Do you know, Dr. Tiffin, whether some of these people had to be tested for the first time? A I think a few of them had been, they were calling for overtime to help us test the test.

Q Now, when you received the test scores [869] and the ratings at Purdue University, would you tell us what you did then? A I ran a correlation between the test scores of the men and the job performance rating for the men in each group.

Q And was this a mathematical formula that you used? A Yes, we used what's called P co-efficient.

Q What is the P co-efficient? A It gives an index or measure of the relationship between two variables, in this case the test score was one variable and job performance rating was the other variable.

Q Now, is Company Exhibit No. 3 the written report that you prepared after you had done this? A It is, sir.

Q Is this an accurate report based upon the information that you have? A Yes, it is, sir.

Q Now, I'd like you to look at page one of [870] Company Exhibit No. 3. Does the Court have a copy?

The Court: Yes, I think so. A I forgot to date it. July 16th is the date. I had to write it in ink.

Mr. Thompson:

Q July 16th is the date? A Yes.

Q Do you have a copy of the report? A The judge has it now.

Q Looking at page 1 of Company Exhibit No. 3, I notice you have certain asterisks there, one and two, would you explain what these asterisks mean? A Well, when a correlation is computed between two variables, it could happen by chance; if the correlation could occur by chance alone only one time in a hundred, I have two asterisks; if five times in a hundred, one time in twenty, one asterisk, and one chance in twenty, it couldn't have occurred by chance alone.

[871] Q Proceeding to page 2 of your report, looking at the column on the right, you have the letter "N" at the top of the page, would you explain what that column means? A Page 2?

Q Page 2 of your report, looking at the top of the page on the right hand side, the capital letter "N", what do those numbers underneath mean? A I don't see that, sir.

The Court: The column heading on page 2, the first one following the job group. A Yes, "N" means the number of employees in the test.

Mr. Thompson:

Q That is the number of employees that were in that sample? A In that sample, yes.

Q Going to the next column, you have the word "Beta." A Yes.

Q Does that stand for Beta test? [872] A That's correct.

Q And Wonderlic A and the next one is Wonderlic B? A Right.

Q There are ten groupings on page 2? A That's right.

Q Did you find a positive correlation for all the groupings or how many did you find? A All but one, nine out of ten.

Q Which group did you not find a positive correlation? A The "B" paper mill, stockroom operator, stockroom first helper; none of the tests correlated significantly to test the people in those jobs. That's the only one that failed.

Q Now, going to page 3 of your report, Dr. Tiffin, you have a chart there, and the first one pertains to the Wonderlic A, I believe, job group number one, Test Wonderlic A? A That's right.

[873] Q Looking at the chart, going over to the left hand side, twenty-three or above and then on the right hand

side it has 100, would you explain what that means in that chart? A Well, I followed the advice in the guidelines to present the result in statistical and also graphic form. These charts are the graphic form of the result. That is known as an expectancy chart. This chart shows that for men in the caustic operator and lye kiln operator, the man who has a score of 23 or above, 100 percent were superior; those scoring 21 to 22—ninety-nine percent superior; those scoring only 8 to 15, only one percent were superior. This is a graphic representation of what that correlation means.

Q Going to pages 4, 5, 6, and 7, you have similar charts? A That's right.

Q Would the explanation you just made apply [874] to those charts? A Exactly.

Q Dr. Tiffin, I would like for you to turn to page 8 of the validation study. I notice on page 8 of the study you say that you recommend a score of 103 on the Beta, would you explain that recommendation? A We look back now to page 4, the chart for recovery operator, first helper and we note that the score 106 or above, 106 to 109, 76 percent is superior. If the score is below 106 a smaller percent is superior. So it seemed reasonable in the light of that chart to say that 103 in the Beta is a very minimal score. Let's look at the middle third of that test. Those who scored 103 to 105, sixty percent is superior. And I felt that 103 was a very reasonable minimum score to require of that test, for that operator.

Q All right. Dr. Tiffin, looking at page 8 of your report again, I notice that you [875] recommended a minimum score of 17 on the Wonderlic A? A Correct.

Q Would you explain that recommendation, please, to the Court. A Well, if we glance here at the chart for

Wonderlic A, it's graphed out, we find that 17 is about as far as you could reasonably go and still expect a reasonable number of superior people. That is an overall generalization of all the charts of the Wonderlic A.

Q Dr. Tiffin, I notice that your summary here on page 8 of your report says nothing about the Wonderlic B, would you explain why nothing is said about the Wonderlic B in your general summary? A Because the Wonderlic A came through just a little better on average than the Wonderlic B, it's the same kind of test and I felt the Wonderlic A would be all you'd need. We don't need the Wonderlic B.

[876] Q Looking again, Dr. Tiffin, at page 2 of your report, I notice you have the three tests, the Beta, the Wonderlic A and the Wonderlic B; I notice that not every test is validated for every job group. A That's right.

Q Would you explain why that occurs? A Well, no test or no set of tests will validate for all jobs. In this case we are very fortunate to find that one or more of these tests validated for nine of the ten job groups. But one group failed. Group 6, "B" paper mill, stockroom operator and stockroom first helper. No one of the tests validated for that group of jobs. So there is no chart for that group.

Q Now, based upon your study, Dr. Tiffin, did you recommend that the company utilize these tests for its initial hiring? A I did, sir.

Q And why did you make that recommendation? [877] A Because as the men are hired, in the labor pool or whatever it is, then they are finally put in a progression line, and if they make scores of 103 or better on the Beta test, and 17 or higher on the Wonderlic A, they can go to any of these progression lines and get along pretty well, if they don't, they can't.

Q Dr. Tiffin, are you familiar with the standard for educational and psychological testing manual? A Yes, I am, sir.

Q And what is that manual, Dr. Tiffin? A That manual gives the details of how to go about validating tests and using tests, it is a very comprehensive document.

Q Is that a classic in the industry, so to speak? A In the psychology profession, yes, it is.

Q Did your study which you conducted for Albemarle Paper Company, did you follow the principles set forth in that manual? [878] A A hundred percent, I did. I wouldn't dare not to, wouldn't want to.

Q Dr. Tiffin, with respect to the Wonderlic A and B and the Beta, I'd like to ask you one question and that is the origin of these tests themselves, in your professional opinion are they profesionally developed tests? A They are, sir.

* * *

[881] Q Dr. Tiffin, in your professional opinion is the Beta a professionally developed test? A Yes, sir.

Q Is the Wonderlic, A and B, a professionally developed test? A They are, sir.

[882] Mr. Thompson: Your Honor, at this time, I would like to offer Company Exhibit No. 3 for identification which is the validation study of Dr. Tiffin into evidence as Company Exhibit No. 3.

Mr. Belton: We object, your Honor, until we have opportunity to cross-examine the witness.

The Court: I will receive it at this time and if you are able to modify or destroy it by way of cross-examination, of course, that will be given effect, too.

(Validation Study, Defendant Company Exhibit No. 3, admitted in evidence.)

Mr. Thompson:

Q Dr. Tiffin, I believe you also stated you were familiar with the EEOC guidelines? A Yes, sir.

Q Are these tests which we just mentioned professionally developed in your professional opinion —

Objection:

[883] Q —within the meaning of those guidelines?

Objection: Overruled

A Yes.

Q Dr. Tiffin, have you ever been through any paper mills? A Yes, I have, sir.

Q Have you ever been through the mill at Roanoke Rapids? A Yes, sir.

Q And you have been through some other mills as well? A Many other paper mills.

Q Did you have occasion to go through the mill down at Roanoke Rapids within the last few months? A I have, sir.

[892] Mr. Belton: Cross-Examination

Q Dr. Tiffin, could we get the names of the persons who worked with you in the studies that have been identified as Exhibit No. 3? A What is that again, sir?

Q The names of the persons who worked with you in the study identified as Exhibit No. 3, the validation study? A Mr. Moore.

Q Was he the only person? A Yes.

Q Would you tell us how long you spent at the plan when you visited the plant in Roanoke Rapids? A Abou a half day.

Q In preparing your study did you have written jol descriptions? A No.

Q May I ask you, Dr. Tiffin, you have before you l think the lines of progression? A I do, sir.

[893] Q Could you tell us how you got the description of the work performed for the various jobs that you did do the study on? A Well, we took the jobs more or less adjacent in each progression line so that the skills were pretty similar, one to another. Put men on those jobs for the course of each study.

Q Turning to page 2 of the study, the ten jobs that you have listed there— A The ten groups of jobs.

Q — ten groups of jobs that you have listed there, were the only jobs that you considered in your study, is that correct? A That is correct.

Q I take it you took a tour of the plant while you were there at Roanoke Rapids? A Yes.

Q Dr. Tiffin, I think there is a term used in your profession called criterion, is that correct? A That's correct.

[894] Q Could you explain to the Court what that means? A That means measure of job performance. We avoid using the word where we can, but measure of job performance is more meaningful.

Q Measure of job performance? A Measure of job performance, job success, job performance, how well is the man doing the job, that's the criterion.

Q Could you tell us what measures of job performance you used in your studies? A Supervisory ratings of overall job performance. Excluding a man's attitude, just how well the guy can do the job when he's feeling right.

Q Did you talk to any supervisors while you were down there? A No, I didn't.

Q I think you referred to the fact that you had certain manuals used in various jobs, is that correct? [895] A That is correct.

Q Now, could you tell us who selected those manuals for you? A Well, Mr. Moore gave me a great, big stack of the manuals. I just picked out a couple at random.

Q While you were there on the visit? A Yes, that's right.

Q Referring to page 2 of the study, Dr. Tiffin, I note that you have eight people in the group, caustic operator, line kiln operator, A That's right.

Q Do you know, Dr. Tiffin, whether or not that included all of the people who were employees in these two categories? A I don't know for sure but I think that probably was all of them.

Q About all? A Yes.

Q Would that be true for each of the groupings that you have on page 2? A Well, not necessarily. Because that is the [896] majority in each of those groups.

Q Now, assuming that all in the group were not included, who made the selection of the individuals from the particular groups? A Mr. Moore.

Q Do you know of your own information, Dr. Tiffin, the

basis on which Mr. Moore made his selection of these individuals to be tested? A I didn't hear you, sir.

Q Do you know of your own information the basis of the standards used by Mr. Moore in the selection of these individuals in the various groups if all were not selected to be tested? A No, I don't know.

The Court: Do you know if any of those selected had been previously tested?

A I think a few of them had, your Honor.

The Court: You said that before?

A Yes, sir.

[897] Mr. Belton:

Q Do you know who administered the tests to the testees in the study? A Mr. Moore, I assume, or one of his employees.

Q You don't know of your own personal information who administered them? A No.

Q Did you discuss with Mr. Moore the circumstances under which the tests should be administered? A I said to follow the manual of the test. The manual tells how to give a test, how long to allow, what equipment to have available, the manual of the test tells exactly how it is to be given. So that everybody gets exactly the same chance. I'm sure the tests were given under that standard of procedure.

Mr. Chambers: Move to strike that as an conclusion.

The Court: Well, I don't see how I could [898] consider it, he just says he's sure it was but he has no way of knowing. Go ahead.

Mr. Belton: All right, your Honor.

The Court: Wait a minute. Maybe you might have some way of knowing. Why do you say that?

A I'm just assuming that Mr. Moore would follow the procedure in giving tests, part of his job.

The Court: Well, Mr. Moore is going to come back on the stand. We'll find out about that.

Mr. Belton:

Q Dr. Tiffin, could you describe the precautions taken to avoid contamination of the measure of performance by knowledge of the information contained in the tests? A I'm sorry.

Q I said will you tell the steps that were taken to avoid contamination of the criterion or measure of job performance by knowledge of the job content, test content, I should [899] say? A Well, the rater had no idea about the test scores these men made. We never let a rater know what a test score is when he rates him. If you believe in the test you rate him high, if not you rate him low. As a fundamental principle, never does a rater know a test score at all about the men they're rating on job performance. I'm sure the men didn't know the test scores.

Q Do you know of your own personal knowledge whether or not they knew these test scores? A No, I didn't go and watch over somebody's shoulder.

Q Dr. Tiffin, did you have information on the various testees such as age, race, sex? A I did, sir.

Q Do you know how many black persons were included in the study? A I don't know. I know some, I don't know how many.

[900] Q Were you sent information, I take it you were sent information as to these kinds of things, the names of the persons, his age, his race, sex— A Not his race, no.

Q Were cut-off scores used by the company prior to your study? A (no answer)

Q I think you established a score of 17 for the Wonderlic A, and 103 for the Beta, is that correct? A I recommend those.

Q Recommended those. Prior to your recommendation and prior to the time you recommended them were you aware they were using other scores, cut-off scores, for these tests? A I was not aware of that. I might say that they couldn't have been using very high scores because some of these guys tested very low, as low as 8 in the Wonderlic test, and as low as 95 in the Beta. They couldn't have been using very [901] high cut-off scores or they wouldn't have these low testing employees.

Q I think you said you established a cut-off score, recommended a cut-off score of 103 on the Beta and a score of 17 on the Wonderlic A, is that correct? A That's correct.

Q Is it your understanding that employees or applicants if the company followed your recommendation, that they take both tests? A Yes.

Q Dr. Tiffin, I note that in most of the job groupings that you have taken the highest job positions or the highest job positions included among the group, is that correct? A Not the real highest, from the middle on up.

Q Could we go through this listing, the seniority roster, please, I mean the lines of progression. A Yes, I have it here.

Q Now, in the pulp mill department, you have the caustic operator and the line kiln [902] operator, is that correct? A That is correct. Eight employees.

Q Eight employees. Is it your testimony that you used the same test scores for the digester operator position, that is not included in that job group? A No.

Mr. Thompson: I'm going to object to that because I think, I don't understand the question and I think it's misleading.

The Court: All right, let's let him re-state his question and see if you can understand it and maybe you will withdraw your objection.

Mr. Belton:

Q I note that you have the caustic operator and the line kiln operator in the first group? A Job group one.

Q And looking at the lines of progression, they have a category, the first branch of the line is digest operator at the top, just reading across the top of the page, Dr. [903] Tiffin, directing your attention to the top of the page, I'm asking you would you expect the company to use the same cut-off score for that position? A I would.

Q The digester operator position, is that correct? A That's right.

Q Let me ask you this question: would you expect for all the lines of progression as shown on the lines of progression for the various departments, the various lines of progression in the various departments, to use the same cut-off scores? A These were minimal cut-off scores for all those lines.

Q For all those lines. That would include the shipping room, department "A" mill? A That's right. All the job groups on page 2 of my report. Except the one that the test didn't come through.

The Court: Number six.

[904] A Number six, correct.

Mr. Thompson: I'm going to have to object to the question because I think that's an incorrect assumption. And that is there are certain jobs here we were not testing for and that were not included in this report here and I think that the question assumed there was a test on everything on all lines of progression.

Mr. Belton: Your Honor, I'm just trying to find out what the validation study report covers, since all jobs are not covered I asked him whether or not he expected the cut-off score he recommended to be used for all lines of progression even though they were not covered by the report.

The Court: He has answered that question, has he not?

Mr. Belton: I don't think he has answered.

The Court: Did you answer that question?

A What was your question again, sir?

[905] Mr. Belton:

Q Let me back up, Dr. Tiffin. You did not include all jobs in your report, is that correct? Or study all jobs in your report? A That is correct.

Q The question I am putting to you now: do you expect the recommended cut-off scores to be used for all lines of progression in all departments? A No, only in those we studied, the nine job groups.

The Court: You actually studied ten groups and you're omitting one because it didn't work out? A That's right.

The Court: Go ahead.

Mr. Belton:

Q Did you make a study, Dr. Tiffin, of the reliability of the measure of performance? A No, I didn't do that.

Q Dr. Tiffin, you indicated I believe that Mr. Moore made available to you certain [906] manuals? A Yes, he did.

Q Did he then go through and sort of explain to you what manuals were used for what jobs? A Yes, he did.

Q Did he tell you what jobs these two manuals were used for? A Yes, he did.

Q On what basis did you determine, Dr. Tiffin, did you determine that these two manuals were actually used by the persons in the job, was it based on your conversation with Mr. Moore? A Yes, it was.

Q Returning to the validation study, Dr. Tiffin, I notice that you do have approximately ten charts, is that correct? A Ten what?

Q You have ten charts. A Nine charts. Six is missing because the test didn't come through in job group six. You never make up a chart unless the test [908] comes through. Except on the conference level.

Q I think you testified, Dr. Tiffin, that it's almost impossible to validate the requirement of high school education? A Not impossible but practically impossible. Very impractical, completely so.

Q If you were to attempt to validate it, the high school

requirement, in what way would you do it? A I'm sorry, sir.

Q If you were to attempt to validate the high school requirement, how would you go about doing it? A I mentioned that awhile ago in the direct examination. The only way to do it would be to hire a whole bunch of men with and without high school educations. Put them all on their jobs, and wait, oh, six months, a year, maybe two or three years, and then get ratings of job performance, and if those without high [909] school educations did not do as well as those with high school educations then you've got a validation of that department; that's the only way in the world to do it scientifically. But it's a long-winded, expensive, time-consuming proposition. That's the way to do it, the only way.

Q Realizing the difficulty of validating a high school education, do you have an opinion as to whether or not it should be used as a criteria for employment or promotion? A I do on the grounds of these things that the people must read. It's written in such a difficult way that you've got to have at least a high school education to understand it. There is an indirect way to validate that requirement. Indirect but better than nothing. Not very precise. These materials I first counted came out with very difficult reading indexes and you've got to have a high school education [910] to read the darn things.

Q The data that you got on the testees, you did have an educational background, is that correct? A No, I didn't have an educational background. Didn't have it at all, didn't use it, didn't have it. The test scores against job success, the correlations were.

Q Dr. Tiffin, do you know whether or not there are some people at the plant that do not have high school educations? A I do.

Q Dr. Tiffin, do you think the race of the individual might affect a validation study of the testees? A Race might affect it?

Q Yes. A Only to the extent that men of a certain race might not have had the background, educational background, but the test is not discriminatory by race at all. It discriminates against those who don't have [911] the background to do the work, to take the job.

Q When you say background, is it the ability to pass the test or the ability to do the job? A The ability to pass the test in the validation instance, yes. But these studies show clearly that if you don't have these minimal scores you're not going to be able to do the job very well. That's not discrimination as I see it at all.

Q I wasn't asking you about that, I was asking you whether or not the race of the individual might affect his performance on the job, given a situation where he doesn't do as well on a job say as a white compared to a black? A I can't answer that question, sir.

Q Are you aware of the studies in the profession that are attempting to research this question? A Yes.

[912] Q Have you read any of these studies? A Yes, a few.

Q Do you have an opinion as to the approach that has been taken with respect to these studies as they try to focus in on this question? A Yes, I have an opinion. If a company is using a test with no validation of that test, and there are some big companies that are doing that very thing,

they've been courting trouble, but that's a mental test that minority groups score low on, but there's no validation of the test at all. But they're using this anyway. Now, that's out and out discriminatory. There is no relation to job success, but the black people score low on that test so using that test is discriminatory. And I'd be the last guy in the world to recommend that a company do a thing like that. It would be terrible. It's known as bad business.

The Court: And productive of lawsuits.

A That's right.

[913] Mr. Belton:

Q Doctor, I am trying to understand your answer to that, and correct if I'm wrong, you are saying that if a company uses a test that is not validated and that black persons do less well than whites— A Out and out discrimination.

Q No, I'm not asking about discrimination, I'm talking about validity. Let me pose a hypothetical to you: if a company uses a test that is not validated and black persons do less well on the test than whites, yet they perform equally as well as whites on the job, how could this affect the validity of the test, can you follow my question, Dr. Tiffin? A Yes, I think I can. And there would be no validity to the test. There is no correlation at all between job performance and test scores and you'd drop that test like a red hot potato.

Q Doctor, I believe you said you did not know [914] the race of the individuals in this group? A No.

Q Did you ask for this information about race? A No.

Q Is there any reason why you didn't ask for it? A I wanted to validate the tests, pure and simple, without regard to race, creed or color.

Q A moment ago, I was asking you about it, the hypothetical that I posed to you, would this be a pertinent consideration for validation? A I think it would not be, no.

Q You are aware that the profession recognizes that as a general rule, blacks do less well on written tests? A Yes, I am very much aware of it.

Q But it wouldn't make any difference in your studies? A (Witness shakes head negatively.)

[915] Q Your study did not include validation of all the jobs, is that correct? A That is correct.

* * *

[919] Edward C. Moore, Jr., [having previously been duly sworn to tell the truth] re-called, testified as follows:

Mr. Thompson: Direct Examination

Q Would you state your name, please. A Edward C. Moore, Jr.

Q Are you the same Mr. Moore who previously testified in this case? A I am.

Q Do you have a copy of Company Exhibit No. 3 before you, Mr. Moore? A No, I don't.

Q Mr. Moore, do you know Dr. Joseph Tiffin? A I do.

Q Did you work with him in conducting a validation study at your mill? A Yes, sir.

Q Approximately when did you first meet Dr. Tiffin, Mr. Moore? A It was either April or May.

Q Sir, did he explain to you the mechanics of conducting a validation study? A He did.

[920] Q Would you briefly explain how you went about conducting the study? A We, in looking at the mill, were interested in validating the tests in the departments that we had considered skilled classifications and had previously tested and as such we took a number of job classifications in groups both from the top of the progressions and the middle of the progressions in those departments, the jobs having like responsibilities or fitting into the other higher classification responsibilities.

Q Going to page 2 of Company Exhibit 3, column one, under the letter "N", there are eight people who participated in that study, according to this report, now would you tell the Court how these people were selected in these job classifications? A These are the eight caustic operations in the lime kiln operators.

Q That's all you have? [921] A That's right.

Q How about the next column going down? A This is the same.

Q Did you make an effort to get every employee who held these permanent jobs to participate in the validation study? A Yes, we did.

Q You tried to get every one? A Yes, to the point that we even tried to accommodate them if it was inconvenient for them, to schedule them at other times to take the test if they had not taken the test previously.

Q Now, looking at all these various job groups, to your recollection were there any employees who refused or declined to participate in the validation study? A There were.

Q Do you recall the names of any of those individuals? A Mr. Ernest Garner, Mr. Joe H. Moody.

Q Do you recall the race of those individuals? [922] A Both Negro.

Q To your knowledge, Mr. Moore, were there any Negro incumbent employees in these groups who did participate? A There were.

Q Do you recall about how many Negroes participated in the validation study? A I believe there were four additional ones, I don't know that I can give you all the names.

Q Would you explain the method that you utilized in having the supervisor rate the employees who were involved in the study? A We received some material from Dr. Tiffin which were little forms and you placed each employee's name on one side of the ticket and another employee's name on the opposite side of the ticket and each employee was rated against every other person within that group or classification. We then brought the supervisors, I personally instructed them to take these tickets, one [923] at a time, look at them, determine which ones they felt irrespective of the job that they were actually doing, but in their respective jobs, did a better job than the person they were rating against, and to go through this process in its entirety in each of the classifications that they were concerned with.

Q Now, did the supervisors who actually did the rating, have the test scores of the people in front of them at the time of this? A They never saw the test scores.

Q After you obtained the test scores and the ratings did you transmit them to someone? A Yes, sir.

Q To whom did you send them? A Dr. Tiffin.

Q I believe you testified that Ernest Garner declined to participate in the study? A Correct.

[924] Q Did he give you any reason for this? A No, he didn't give any specific reason.

Q Did we compel any of the employees who held the incumbent jobs in the jobs that were studied to participate, to take the test? A No, sir.

Q Where were the actual tests administered, Mr. Moore?

A In the personnel conference room at Roanoke Rapids.

Q I believe you testified that another Negro emlpoyee declined to participate in the validation study —

The Court: Joseph H. Moody, he said.

Mr. Thompson: This individual's middle initial was not "P"? A That's right.

Q That's a different Moody than the plaintiff in this case? A That is a different Moody, I don't even know if they are related.

[925] The Court: The plaintiff in this case was not working there in April of this year.

Mr. Thompson: That is the point I was trying to clarify, your Honor. No further questions.

Mr. Belton: Cross-Examination

Q At the time that the tests were given for the study, were the tests given to all the testees at a time, at one time? A No.

Q Do you know how it was divided up? A Well, our facility was very restricted so we could only I think accommodate something in the neighborhood of around I think eighteen at the most at one time.

Q Now, were all three tests administered at one sitting? A They were.

Q Now, the testees, do you have some appreciation, Mr. Moore, of how long each of them had been in the respective job [926] such as caustic operator, lime kiln operator, prior to the time the studies were taken underway? A No, we wern't concerned with seniority.

Q I said do you have any appreciation of that, apart from whether it was determinative or not. A Well, I have appreciation that there were old employees and new employees if that's your question.

Q Do you know whether all the testees had a high school education? A I'm sure there were some who do not.

Q Now, did you see the test scores, Mr. Moore? A Did I see them?

Q Yes. A Yes.

Q You say you didn't administer the tests, but who did? A One of my assistants, Mr. John Burgwyn.

Q Do you know whether he had administered [927] these tests before? A Yes, he has.

Q Would you have any idea as to how often? A Mr. Burgwyn joined my staff I believe in 1967, that was one of his primary responsibilities, was the employment of our employees in the mill and at that time we were giving these tests, so since 1967 through 1971 he has, upon many occasions, had the opportunity to administer these tests.

Q I believe you testified, Mr. Moore, that you tried to get each employee in each of the job categories to partici-

pate in the study and that some refused and I think you gave the names of these two blacks; do you know of the total number you tried to get both black and white, how many refused to participate in the validation study? A Those were the only two.

Q Only two blacks refused to participate? [928] A That is correct.

Q Would you tell us, Mr. Moore, what standard you used for selecting the black participants in the study? A By the fact of the job that they were working.

Q And that would be, if you recall, look at page 2 of the report — A Yes.

Q Would you know what job that was? A Groups Number 2, Groups Number 3, Groups Number 4.

Q This for black employees now? A Yes, sir. Groups Number 6; no, that is incorrect; Number 7, Number 8.

Q Let me see if I can clarify this, Mr. Moore, you said you did have approximately four blacks participating, right? A Well, when I look at these job classifications I think it may have been a little higher, I don't know. There were possibly more than four.

[929] Q I think you testified that Mr. Burgwyn administered the tests, is that correct? A That's correct.

Q Do you know who scored the tests? A I believe he did.

Q Now, in getting the supervisor's rating, did you do this on an individual basis with each supervisor or did you do it as a group? A No, we brought, for each department we brought the supervisors in and we put one supervisor in one

room and another supervisor in another room, in other words, we separated them. And I had a discussion with them prior to their doing this preferential rating. I wanted to make certain that this was entirely, as nearly as possible, an objective determination.

Q I think you also selected the material identified in Exhibit 2 that you indicated you made available to Dr. Tiffin? A Yes.

[930] Q On what basis did you select these materials? A We just randomly went through it and Dr. Tiffin picked out some he thought—

Q I'm talking about how you did it in terms of getting them together for Dr. Tiffin to view. A I had a meeting with all of the department superintendents and assistant mill manager and explained to them what we were attempting to do here and what materials they had in their departments with respect to requirements that would pertain to this gathering of information and when they presented it to me they went through the information with me at that time.

Q You left them some discretion in terms of selection of the materials to present to you, is that correct? A Well, what I asked them to do was to provide me with as much as they possibly had.

[931] Mr. Belton: Thank you, Mr. Moore.

Mr. Thompson: No further questions.

The Court: Let me just ask Mr. Moore this. Was there anything about the furnishing of material or the results of these tests or was there anything about the taking of the tests themselves or the obtaining the ratings from the supervisors which to your knowledge was done with a design to

prove correlation between test scores and the job performance of these people? A No, sir, your Honor.

The Court: Was all of this testing done as objectively as you could? A Yes, sir.

Mr. Chambers: We object to the question.

The Court: All right, I'll strike that answer then and sustain your objection to the question. I just wanted to know, that's what you're after, isn't it, to find out whether or not this thing was phony?

[932] Mr. Chambers: Right, your Honor, we wanted the facts and would ask the Court to draw its conclusion from that but not just simply put the question to him directly.

The Court: All right.

* * *

[933] JOHN E. BRYAN, JR., having been first duly sworn to tell the truth, testified as follows:

Direct Examination

Mr. Lowden:

* * *

Q Would you state your name for the record, please. A John E. Bryan, Jr.

Q Where do you live, Mr. Bryan? A Bradley County, Tennessee.

Q Have you been employed by Albemarle Paper Company, a Virginia corporation? A Yes, sir.

* * *

[934] Q Would you tell the Court briefly what your educational background is? A I have a bachelor of arts, cum laude in psychology from Vanderbilt University and a master of arts in public administration from the University of North Carolina.

* * *

[936] Q Now, Mr. Bryan, I'm going to ask you to look at the contract between Albemarle Paper Manufacturing Company and United Papermakers and Paper Workers, AFL-CIO, Halifax Local No. 425, dated September [937] 23, 1963—September 15, 1965, which is in evidence in this case as the Plaintiffs' Exhibit No. 13, and I'll ask you first, the Albemarle Paper Manufacturing Company is known in this suit as Albemarle Paper Company, is that correct? A Yes, sir, the corporate name was changed at some point in the 60's, dropping the word "manufacturing," that's the Virginia corporation.

Q I'll ask you to turn to Section 10 of that agreement, and ask you to explain to the Court if you will, the operation of the seniority system at the Roanoke Rapids mill, beginning with Section 10.1.1. A This first paragraph, 10.1.1 sets forth the basic principle involved in the application of the seniority system as it applies to personnel promotions, reductions in force, lay-offs, personnel changes, and the essence of it is that when employees are to be promoted or demoted or laid off as the case might be that ability [938] will prevail, by that is meant qualifications, but when ability, all the factors that constitute ability are relatively equal, then seniority will be the determining factor as to who is moved from one job to another or who is laid off. And this seniority is applied within established lines of progression within a given department as shown on the line of progression chart,

and is known as Appendix F. For example, I refer to Appendix F. in the "B" paper mill department, the paper machine line of progression, the top job being machine tender.

The Court: May I call attention to the fact that the Appendix F. handed me relates to the September 18, 1965 agreement.

Mr. Lowden: I meant for you to have them both.

The Court: I don't have the one for '63. A Nor do I, your Honor, I have the '65 and '68.

[939] Mr. Lowden: Can we use the '65 one?

The Court: Was it the same? A It was the same in '63 and in the case of the paper machine line of progression.

The Court: All right, go ahead. A By applying the seniority clause within the line of progression this means that individuals having occupational job family group is known as a progression line and by family group I mean that the jobs have a relationship to each other. They are similar jobs and the jobs are set up in the line of progression with the least difficult, the least responsible job being at the bottom, progressing upwards to the most responsible and most difficult job at the top, with corresponding rates of pay, increasing as we go from bottom to top. Such that the second job in the line of progression in the case of the paper machine in the "B" paper mill, seventh hand requires a knowledge of the work of spare [940] hand number 4; the 6th hand requires the knowledge and skill that is acquired working as a seventh hand and spare hand number 4, and so on up the line and it is a progressive sort of thing and this is the basis for the training system that is used in the paper industry and many other industries for that matter. People are

trained by getting training and experience on the job in these various capacities.

Also, a line of progression composed oftentimes of jobs in which the people must work together as a team as is the case on the paper machine and the individuals that hold these various classifications have certain functions to perform just as many members of a football team have certain functions to perform in executing a play and they all must operate together and each accomplish his job or the paper machine doesn't function properly. This is why the seniority clause [941] sets forth that the provisions are applied within the established lines of progression.

Mr. Lowden:

Q Let me digress there for a moment, is there a labor market in Roanoke Rapids from which the Albemarle Paper Company may hire a trained machine tender if it needed one tomorrow? A No, sir. The only place to obtain a machine tender is from another paper mill and this is done when a new paper mill is built the personnel people go to other paper mills and obtain people in lower classifications such as back tender who has many years of training and experience to reach that position and offers them the opportunity to go to machine tender at a higher rate of pay, not that this new mill is going to pay any more than the old mill for a machine tender but the machine tender job pays more than the back tender. A back tender, for example [942] may see a machine tender ahead of him who's got ten or fifteen more years before he reaches retirement age and this is a much better opportunity for him.

Q But you can't go out in Roanoke Rapids and employ a machine tender right off the street? A No, sir, and there would be no way of getting him the training and experience

that he needs other than on a paper machine itself and it cannot be done through classroom instruction or anything of that type.

Q Is it necessary that the machine tender, the top rated man there, is it necessary that he perform all the jobs in that line of progression? A Yes, sir, it is. And he is responsible for the operation of that machine and the functioning of that crew there. He has supervision above him but he is the top skilled employee and he needs to know what each person is doing and should be [943] doing on that machine and all the parts of, that machine is quite lengthy and covers some considerable area and he can't even see all the people at any one point.

* * *

[944] DR. RICHARD BARRETT, having been first duly sworn to tell the truth, testified as follows:

Direct Examination

Mr. Belton:

Q Would you state your name, please? A Richard S. Barrett.

Q Where do you live, Dr. Barrett? A 5 Riverview Place, Hastings-on-Hudson, New York.

Q And what is your educational background? A I have a bachelor of science in administrative engineering from Cornell University, 1948; a master of arts in education from Syracuse University in 1951; Ph.D. in industrial psychology from Western Reserve University in 1956.

Q Dr. Barrett, do you have an area of specialty? A My general area is applied psychology, applied to industrial problems and lately to educational problems.

Q Could you give us some examples of the kind of work you have been doing in your [945] area of specialty? A I was an assistant and associate professor of psychology at New York University where I taught courses in selection for seven years from 1958 to 1965. At that time I consulted with industrial organizations on selection problems including Equitable Life Assurance Society, Standard Oil of New Jersey and Lever Brothers. Toward the end of that period, around 1965, I prepared a proposal for the Ford Foundation to study differential selection among different social and economic and ethnic backgrounds, received a grant and although I left the University I became an adjunct research professor and I supervised the conduct of the study that resulted in the book, "Testing and Fair Employment." And I have done some more work at other times, Air Force selection tests.

Q Would you just give us several firms [946] that you have been retained by with respect to consulting on testing programs? A Well, primarily, Lever Brothers, Equitable Life Assurance Society, Standard Oil of New Jersey.

Q Dr. Barrett, did you participate in the case of *Griggs* v. *Duke Power Company?* A Yes, I did. I testified for the plaintiff.

Q Have you participated in similar cases? A Yes, I have.

Q Would you name a few of those cases for us, please? A *Colbert* v. *H. K. Corporation, Hart* v. *Buckeye, U. S.* v. *Frazer, U. S.* v. *H. K. Porter, U. S.* v. *Jacksonville Terminal, Chance* v. *Board of Examiners, Castro* v. *Beecher,* and *Griggs* v. *Wilson Sinclair.*

Mr. Belton: What we'd like to do, we have a list of the cases in which Dr. Barrett has participated and rather than

having him read the list, we could have the list [947] identified and show the defendant.

The Court: All right. They did the same thing this morning.

Mr. Belton: We would like to have this identified as Plaintiffs' Exhibit No. 69.

(Dr. Barrett's resume identified as Plaintiffs' Exhibit No. 69, admitted in evidence.)

Mr. Belton:

Q Dr. Barrett, would you identify this document, please? A Yes, it is my resume.

Mr. Belton: We would like to offer this as Plaintiffs' Exhibit No. 69.

The Court: Very well.

Mr. Belton: We would like to identify this document as Plaintiffs' Exhibit No. 70.

(List of cases identified as Plaintiffs Exhibit No. 70.)

Mr. Belton: We would like to offer Plaintiffs' Exhibit No. 70 which is the list of cases [948] in which Dr. Barrett has participated either as a witness or on a consultation basis.

(List of cases, identified as Plaintiffs' Exhibit No. 70, received in evidence.)

Mr. Belton: We would like to offer Dr. Barrett as an expert in industrial psychology with special emphasis on testing.

Mr. Lowden: We will accept that with the remark that he didn't write the book though.

The Court: Well, he is one of four authors of a book I'm looking at entitled "Testing and Fair Employment." Is that the book you're talking about?

Mr. Lowden: No, sir, I'm talking about the book that Dr. Tiffin wrote which is the basis for all of it. But we will accept him as an expert, your Honor.

The Court: All right, sir, and the Court will.

Mr. Belton:

Q Dr. Barrett, I show you document that is identified as Company Exhibit No. 3 and [949] ask you if you have had an opportunity to review that document. A I have.

Q When did that document first come into your hands? A Last night.

Q Dr. Barrett, were you present this morning when Dr. Joseph Tiffin was testifying as to the validation study conducted at the Albemarle Paper Company in Roanoke Rapids? A Yes, I was.

Q Do you recall the testimony of Dr. Tiffin that he had followed procedures outlined in a manual called "Standards for Educational and Psychological Tests?" A Yes.

Q Let me show you this document.

(Conference between counsel)

Q I think I was asking you, Dr. Barrett, whether or not you recall the testimony of Dr. Tiffin? [950] A Yes, I do.

Q And do you recall the complete testimony of Dr. Tiffin, both on direct examination and cross-examination? A Yes.

Q Now, based on that testimony, Dr. Barrett, were the standards set forth in the manual which you are now looking at, that were not followed in the study identified as Company Exhibit No. 3? A Are you referring to the report itself?

Q The report itself and the testimony.

Mr. Lowden: May we identify the document he's looking at because we don't have a copy of it.

Mr. Belton: It is "Standards for Educational and Psychological Tests and Manuals." A Published by the American Psychological Association, Washington, D. C.

Q The question is were the standards set forth in the document you're now looking at, were there standards set forth in that [951] document which were not followed either in the report identified as Exhibit 3 or as further explained by Dr. Tiffin in his testimony? A Yes.

* * *

Q Dr. Barrett, would you briefly describe the document you have before you? A This is a policy statement of the American Psychological Association. It contains a number of sections, among [952] the most pertinent is headed "Criterion Related Validity" of which the concurrent validity described by Dr. Tiffin is an example. The book has in it several brief statements, some of which are listed as being essential for a test manual, some of which are listed as being very desirable; some of the more essential ones are printed in bold-face type, their importance not to be overlooked.

Q Would you briefly outline what some of those principles are? A For instance, C-4 says that all measures of criteria, which is what Dr. Tiffin defined as job performance, should be described completely and accurately, the manual should comment on the adequacy of the criterion; wherever feasible it should draw attention to significant aspects of performance that the criterion measure does not reflect or to irrelevant [953] factors that are likely to affect it. This is printed in bold type and listed as essential.

Mr. Lowden: If your Honor please, I think he should state the page of that book for us. A Page 16.

Mr. Lowden: And describe what he's talking about when he's reading. I believe he's talking about the manual, and what Dr. Tiffin did was conduct a validation study himself, not write a manual.

Mr. Belton: The testimony of Dr. Tiffin, your Honor, is that he had followed this document in the validation study that he conducted and I'm questioning Dr. Barrett about some of those standards or principles as set forth in there, how it compares with Dr. Tiffin's testimony.

The Court: I assume that the witness would say that he agrees with what's in the book so instead of letting you ask [954] him what he would consider as some of the procedures to be followed, I'm just letting him go ahead out of the book. You agree with all that, don't you? A Yes, sir.

Mr. Lowden: What then is in evidence so that we might —the book should be in evidence.

The Court: He's putting it in, piece by piece.

Mr. Belton: Your Honor, the only reason why we are not putting this particular document in evidence is that Dr. Barrett indicates this is his own personal copy and he would want to take it back, but it will be available to the defendants and we would like to reserve the right to introduce it, a copy of that document, for the record, but under the circumstances—

The Court: I'll let you do that.

Mr. Belton: For clarity purposes, your Honor, we would like to leave Plaintiffs' Exhibit [955] No. 71 open for the introduction of that document.

Q Dr. Barrett, would you explain to the Court the study conducted by Dr. Tiffin and the resulting report, how does that compare with the principles set forth in the document you are now looking at?

Objection: Overruled

Mr. Lowden: Your Honor, I think he ought to find out whether or not it violates the guidelines of the EEOC rather than some psychological association's guidelines. They may be incorporated but I don't know that.

The Court: This testimony is designed I take it to show if it can the inaccuracy of the procedures and methods employed by your witness and I'm going to let him testify.

Mr. Belton: Dr. Tiffin testified he used this.

The Court: You've won this one, go ahead.

[956] A The report does not give any description of the criterion and it was after Dr. Tiffin testified that I learned some of the details of how it was done; there was not enough detail in my mind to assure me that factors that are relevant are all included and those that are not relevant are excluded. Shall I continue?

Q Please. A Another section, this is page 17, at C-4.4, it says, "The time elapsing between the test administration and the collection of criterion data should be reported . ." in the manual. This I learned only after the testimony was given that it was not included in the manual nor in the report and this is an essential piece of information.

Page 18, C-4.5 says, "the criterion score should be determined independently of test scores. The manual should describe any precautions taken to avoid contamination of the criterion or [957] "should warn the reader of possible contamination." This is essential and again the report says

nothing upon this topic and the description that was given by Dr. Tiffin was most sketchy on this point, a most critical point.

It also says, page 18, section C-5, "The sample employed in the validity study and the conditions under which the testing is done should be consistent with the recommendations made in the manual and they should be described sufficiently for the user to judge whether the reported validity is pertinent to a situation." And the procedures used are not described in the report. This also is essential. C-5.1.

The Court: You mean that it's essential that it be described in the report? A That you should know enough about the conditions under which the testing was [958] done to make sure that they were done properly. There are many ways in which tests may be improperly administered.

C-5.1 says, "The basic statistics which should be reported in the manual for validation sample are measured central tendency and variability." This is essential. No such statistics have been presented.

Section C-5.2 says, "The validity sample should be described in the manual in terms of those variables known to be related to the quality tested such as age, sex, socioeconomic status and level of education. Any selective factor determining the composition of the sample should be indicated." Essential. This was not described in the report and was described somewhat orally later. C-5.4.

Mr. Belton:

Q Dr. Barrett, to what particular point in [959] the testimony were your last remarks addressed? A Dr. Tiffin said that he had no information on the race of the individuals and Mr. Moore testified that there were six or so, four to six, who were black. There is no real indication as to the age of the people although it was indicated that there

were long and short service employees and in a mature organization you would assume there are people of wide age range which is critical because older people are quite different in their test behavior and job performance than younger people and it may be that test scores are in no way indicative or useful in determining the validity of a test for selecting a different kind of person, namely, a younger person.

C-5.4. Well, this is what I said. It says, "The validity of a test should be determined on subjects who are [960] at the age or in the same educational or vocational situations as the persons for whom the test is recommended in practice. Any deviation from this requirement should be described in the manual." Essential. No such deviation was described and based on the testimony I heard, there are people who are not in the same educational or age situation or vocational situation, as people who would be taking the test.

Page 20, C-6. Says, "Any statistical analysis of criterion relating to validity should be reported in the manual in a form from which the reader can determine what confidence is to be placed in the judgment or predictions regarding the individual." This is essential. One of the things that was lacking totally in the report was what kind of statistic was used and there was only under examination that we learned [961] that a standard statistic of Phi co-efficient was used, but it was not in the original.

Page 21, Section C-6.11: "A report in the manual or elsewhere concerning the criterion related validity of tests should ordinarily include: (a) one or more correlation co-efficients of a familiar type; (b) description of the efficiency with which the test separates criterion groups, and (c) expectancy tables or (d) charts that graphically illustrate the relationship between the test and the criterion."

Now, a correlation of a familiar type was included for all the data; however, charts that graphically illustrate the relationship between the test and the criterion were reported only in those cases where the tests worked out and in fact only in that particular case where the test worked out the best, giving a distorted [962] picture of how the test would look since all the bad data were not included.

That's the end of the pertinent parts of the standards for educational and psychological test and manual.

Mr. Belton:

Q Dr. Barrett, could you briefly describe, very briefly, the procedure for validating a test? A Well, the first steps required in validation of a test is a thorough job analysis so that the person knows what jobs are covered, knows how to cluster jobs as necessary to put jobs of a similar nature together for validation purposes, to develop a criterion and if one is developing a test battery which is not the case here, to decide which test to pick. Then the test should be tried out and validated by comparing the test scores with the criterion scores. As Dr. Tiffin [963] mentioned, there are two essential ways of doing this and one is called predictive validity in which the test scores are retained from a group of applicants until they have had a chance to perform on the job and measurements can be taken. The virtue of this is that this is certainly the best way to get the information. The trouble is it takes too long.

The concurrent validity study which he described and of which this study is an example, has the virtue that it is quick, it literally can be done in one day. It is collecting the data by having ratings done one day and at the same time having the tests given. It has the vice that there are many problems. One is that as in this case it's quite possible to include people who are not like the candidates,

quite possibly very much older people are included and the test [964] score and job performance may have a different relationship than would be true of candidates. Furthermore, we don't know anything about those people who over the period of time have left this sample. The more capable people have perhaps been promoted out of this work group. Less capable people have perhaps already been fired. Unstable people or people who have just happened to not work out in general may have quit of their own accord. There are many reason why a concurrent validity study is not desired, and the only real virtue is that it's quick.

Q Again, referring you to the testimony of Dr. Tiffin and the procedures of the standards used to validate the test, strike that; referring to the testimony of Dr. Tiffin and the procedure used to validate the tests, would you compare what he did, Dr. Barrett, to the standard you just [965] outlined in terms of what he did? A In terms of the standards in this book?

Q Just in terms of procedure in terms of validating these tests. A Well, part of what I said is that a person administers tests and gets the criterion information. Implied in that is that the individual does it himself or does it under his direct control. I think it's extraordinarily bad practice to have the basic data for studies collected by people who may not have the training to do this work properly and even worse practice to have the data collected by people who have an interest in the outcome.

Q Well, what about job descriptions? A Job descriptions I thought were totally inadequate. There were no job descriptions of a written nature. Dr. Tiffin testified that he studied a chart of progressions, spent about a half a day in the plant, and even if someone has a [966] background by

having been through other plants this is a very limited amount of information from which to conduct a validity study.

* * *

Cross-Examination

Mr. Lowden:

Q Dr. Barrett, have you ever been in the Albemarle Paper Company mill in Roanoke Rapids? A No, I have not.

Q Have you ever been in any other paper mill? A Yes, I have.

Q Which? A Meade Corporation, Chillicothe, Ohio.

Q And that's the only one? A Yes.

Q How long ago were you in that? A Oh, this was back around 1955.

Q Did you make a study for the Meade Paper Company in 1955? [967] A Yes. The purpose of my being there was to write job descriptions for the purpose of job evaluation.

Q You did not set up a testing program? A No.

Q Now, you testified about several paragraphs in this red book which is called "Standards for Educational and Psychological Testing Manual," A Yes.

Q And you pointed to various sections I have briefly scanned and it appears to me that most of those go to the form of the report that Dr. Tiffin had made and not the substance, is that true? A I believe that these raise very important substantive issues. I think the report should state, for example, what the jobs are that are being covered

in the report, what statistics were used so that one knows what statistics are more appropriate in given circumstances than others. These [968] things were left out completely.

Q From the report? A Yes, sir.

Q What you were just talking about was left out of the report? A Yes. Excuse me, some things were left out of the oral presentation as well. We still have no data as to age of the people for example who took these tests, which is important.

Q I take it that, since this is your field, you do believe that psychological testing is a good employment tool, is that right? A Yes, I do.

Q And as a matter of fact, isn't it true that the only practical type of validation is concurrent validation, isn't that true? A No, that's not true. I've done a study which was partly made possible by a foresighted member of the company who stored away information for six or seven years, we then came back and compared that [969] information with the later performance of the people on the job.

Q Assuming that the average person doesn't have that kind of foresight and you want to make a validation study and you don't have all that information, then the accepted method is concurrent validation, is that not true? A Yes.

Q And it's recognized perfectly acceptable under the EEOC and the OFCC guidelines? A Yes.

Mr. Lowden: We have nothing further, your Honor.

* * *

[972] Dr. Joseph Tiffin, re-called, testified as follows:
The Court: Dr. Tiffin, are you familiar with this red

booklet or pamphlet from which Dr. Barrett read? A Yes, I am.

The Court: Are you a member of the American Psychological Association? A Yes, sir.

The Court: Do you agree generally with the principles for validating tests which he referred to as appearing in that book? A I do, sir.

The Court: Have you conducted other concurrent type validation tests in the industry? A Yes, sir.

The Court: Have you done those tests substantially in accordance with the procedures which you employed in the Albemarle case?

Mr. Chambers: Objection:
A Yes.

[973] Mr. Chambers: Your Honor, I don't think that the other validation studies that he might have made would be pertinent to this proceeding; it certainly doesn't show that he followed the procedure in this case.

The Court: All right, sir, your objection is noted for the record.

Now, explain to me, if you will, how the recommended procedures of your Association as given to the Court by Dr. Barrett differ from those that you employed in the Albemarle case?

A Well, as Dr. Barrett pointed out, there are two ways of validating tests. The predictive method and the concurrent method. The predictive method is a follow-up method and is done if you have all kinds of time. Now, study after study have shown over the years that if you get a significant correlation with the concurrent method which was followed

here you still get a still higher correlation if you use the [974] predictive method. In other words, these correlations are very conservative statements of the two relationships. And as Dr. Barrett pointed out, with the concurrent method, the guys that couldn't do the job, they've left or been terminated. So you've got restriction of range of the people with the concurrent method. And the more restricted the range, the lower the correlation is going to be.

Mr. Chambers: I'd like to object because I don't think that's responsive to the Court's question. And I move to strike the witness' answer.

The Court: All right, sir. Go ahead.

A You see, if you have a restricted range it drops the correlation. Now, an extreme case of that, supposing everybody quit except the guy that made the highest test score, or a few guys made very high test scores, you'd get no correlation at all, zero. But you've got a range of test [975] scores and a range of ability on the job, you get a higher correlation. Now, the follow-up method, the predictive method, you've got everybody in there, and so your correlation is going to be very high, other things equal. But with the concurrent method, you've got a restriction of range, both the test score range and the job performance range. If you get a significant correlation with the concurrent method you're very safe.

The Court: Let me hear you comment on the failure in this case to provide you with any information relating to the age or sex or the race of these various testees.

A Well, Mr. Moore sent me the ages of all the men but I didn't use them, the age figures, for the reason that I ran the correlation between the test scores and job success. Now, age, sex and race were incidental, more or less unimportant in these studies.

[976] The Court: In view of the questions asked by the Court, are there questions by counsel for either side?

Mr. Thompson: We have no questions.

Mr. Belton: No further questions.

The Court: All right, Dr. Tiffin and Dr. Barrett are excused, and thank you for coming and giving us the benefit of your testimony.

* * *

[997] John E. Bryan, Jr., [having previously been duly sworn to tell the truth] re-called, testified as follows:

Mr. Lowden: Direct Examination

Q I believe when we were interrupted you had finished discussing the lines of progression, had you finished, Mr. Bryan? A I believe I can pick up where we left off. With regard to seniority being applied within the lines of progression, I think it is important to understand that, as I said earlier, these lines of progression are jobs that are related to one another and people in these jobs work together as a team to accomplish a given part of the mill's function.

For example, the wood yard department has the responsibility for getting the chips to the pulp mill; receiving the wood in the form of logs or in the form of chips and turning the logs into chips, and turning that over to the pulp mill, and the pulp mill in turn [998] takes the chip and makes it into pulp, sends the pulp on to the paper mill and the paper mill makes the pulp into paper, to give a very simple flow there, to show that these jobs in the wood yard department are related to each other in accomplishing that function but are not related to the paper mill, or to the pulp mill. And it is an occupational grouping and also the line

of progression furnishes a career opportunity for an individual to progress, so that when he's hired in and he goes into a particular line of progression he knows what his job opportunities are, he knows what he has to learn in order to reach and to reap those opportunities.

But what he learns in the wood yard, for instance, would be of no help to him in the paper mill. It's not something that is peculiar to paper mills, this is found in all forms of occupations, [999] such as, well, we've even got a dozen or so lawyers here today and the lawyers here have many, many years of experience but I'm sure that none of them would want one of their brother lawyers to operate on their appendix —

Mr. Chambers: We move to strike that, your honor.

The Court: Well, I don't think it's material; he's using it for an illustration; go ahead.

A The same sort of thing applies to these lines of progression. They are occupational lines in and of themselves, the jobs within the line being related to each other but not to jobs in other lines of progression.

Now, to go on with how this particular seniority system is set up, it is a very common seniority system.

The next paragraph, 10.1.2, has to do with those rare situations [1000] when an employee does not desire to accept a job advancement that is offered to him. There is a penalty contained in here regarding his loss of seniority status if he so elects.

For instance, if the sixth hand on a paper machine were offered the fifth hand job and declined it, then the reason for the penalty is that this would tend to what we call freeze that sixth hand and he would be blocking the line of progression, meaning that people below him would not

have the opportunity to work up into this line of progression during vacations and this sort of thing in order to learn the next higher job. And there is a problem in training to get the seventh hand past the sixth hand up to the fifth hand if they by-pass the work of the sixth hand, because it's filled with frozen people.

Then when they are in the higher [1001] jobs, they don't know the functions of the lower job, having no experience in them and this is essential as I explained earlier, to the efficient operation of the paper machine.

10.1.3 again takes care of exceptional situations. Normally seniority is followed in promotions, assuming that the people are qualified, but in such cases when the senior man is not selected the union committee must be notified by the company in order for the union to review the situation and determine whether or not they wish to contest it through the grievance procedure.

For the company's protection, the next portion of this paragraph—normally there are people in the lower jobs qualified to go up to the higher jobs. Where this does not exist, these rare cases, then this gives the company the right to select someone [1002] from another department, after discussion of the matter with the union committee, again, so that the union, if it desires to contest it, may do so through the grievance procedure.

But this is a rare sort of thing for this to occur and when it does occur it's often due to people being frozen because they were unable or unwilling to advance higher in the line of progression.

10.1.4 has to do with employees promoted to supervisory positions outside of the bargaining unit, represented by the union. It provides that the supervisor will retain his seniority back in the unit for no more than six months. The union in-

sisted on this clause to force the company to not make selections of supervisors and put them on trial and then move them back because when they move them back it [1003] adversely affect the status of at least one or more employees in the bargaining unit.

Seniority is of such nature that where one person is favored by any seniority provision, there is always another person who is adversely affected.

10.2, as I said earlier, normally an employee stays in the same line of progression his entire working career. However, there may be instances in which the person initially elects to go into one line of progression and then he gets in there and finds it's not what he thought it was or the opportunity doesn't look so good to him, he doesn't like the work, or whatever his reason might be, so a provision has to be made to let him apply for transfer to another department or line of progression. This is what 10.2 is about. He does this by making application to his foreman [1004] to the personnel department.

Now, the company retains the right under this provision of the contract to grant or deny this request for transfer because the company has an investment in the training of these people and if it were too easy to obtain a transfer the people could possibly be moving all over the mill like checkers without any regard to the effect that it has on the efficient operation of the mill, and the loss of investment in the training of the individual.

This particular clause is one that has been in the contract many, many years. It goes back as far as we were ever able to research in the history of contracts between this company and the unions at this particular mill.

Part of the paragraph has to do with persons retaining or losing seniority upon transfer and the last part [1005] where

the transfer is effected at the request of the company, for some peculiar reason there is not someone qualified within the line of progression, the company may request an employee from another line to move over and take the promotion and then such an employee keeps his seniority in his old department and line for a longer period of time because it was on motion of the company and not his own motion that he did this.

In 10.3 there are definitions of the various types of seniority used in this system—job department and plant seniority. And all of this is based on the general principle set forth in the first paragraph of this section, that qualifications come first, and this is a traditional point of conflict between this company and this union and in fact between companies and unions in general, the employer wanting qualifications [1006] to be the only consideration on the one hand and the union wanting seniority, plant seniority, generally to be the only provision upon which personnel movements are based.

The unions take the position because they contend that leaving the determination of qualifications to the employer leaves it open to some disagreement to perhaps partiality and various other considerations there, whereas the employer naturally takes the position that length of service itself is no criteria for advancement nor for retention in the event of lay-off.

Now, in this particular contract, typical of union contracts in that the parties have reached a compromise position, and put a great deal of emphasis upon job seniority in relation to the other points of seniority.

The term 'job seniority' [1007] as used in this contract means the total length of continuous service in a particular job classification. And it is cummulative within the line

of progression. For example, to use the paper machine line again, an individual who has held only the bottom job of spare hand on number 4 machine would have job seniority for that particular job classification dating from his entry into that job classification.

Now, as that person progresses up the line to machine tender then when he becomes a machine tender he has job seniority dating from his date of classification as a machine tender, but if there should be a reduction in force back down the line, say one of the paper machines was decommissioned and he ended up in one of the lower jobs, if he got all the way to the bottom, spare [1008] hand number 4, and held up there it would be on the basis of his total job seniority in that line of progression, in other words, spare hand number four, plus seventh, sixth, fifth and so on up to machine tender, and this is then tantamount to department seniority and further, in most instances, is tantamount to plant seniority because of the fact that people go into and stay in the same line of progression throughout their working career.

Therefore, when it comes to actual lay-off from the bottom job in a line of progression, it is based on not job seniority as such but really on plant seniority, the oldest man gets to stay as long as there's one job there.

And this principle is applied below that to the extra board in that people are laid off from the extra board when it becomes necessary to reduce the [1009] size of the extra board, on the basis of the one with the least plant seniority going first, plus people are assigned work from the extra board to temporary openings in the various departments on the basis of their plant seniority unless they had previous experience in the type of work that is being called for. And of course, those people have first call back to it in order to utilize their qualifications.

The Court: Did that answer your question?

Mr. Lowden: Yes, sir.

Q Now, there has been a discussion about the extra boards, would you make an explanation of what the general extra board was and the utility extra board, and how they worked? Just briefly. A The extra board is a form of labor pool and I believe they were probably first conceived by the railroads as extras to fill in when the regular employees [1010] were not available and to also fill in for vacations or what have you. And they had to have a certain number of people to run the train. The same sort of situation applies in this paper mill, that when someone was absent but it was known to be not a permanent thing, then this job had to be manned, every one of these jobs have to be filled at any given time. The mill runs twenty-four hours a day, seven days a week and you've got 365 days a year—as business demands and as negotiations with the union will permit.

But instead of trying to just go out and hire people temporarily to fill in maybe for just a shift or maybe for a week, as the case might be, that would be an impossible situation. This labor pool was developed with the people employed who appear to have potential for filling regular jobs in the future [1011] and then they were listed so that when there is a need for a person to fill a job, it's the top job, if the machine tender is absent, everybody moves up on a shift, and that takes in another paragraph of this seniority section. Then the bottom job is filled from the extra board.

Now, we had up until the summer of 1968 I believe, two extra boards, the general extra board and the utility extra board. The people on the general extra board were people who had the potential for filling jobs in the skilled lines of

progression. The people on the utility board were people who did not have the potential for filling jobs in the skilled lines of progression but who could satisfactorily perform in the unskilled lines of progression.

The Court: Were the members of the utility board all black? [1012] A They were not after some time I believe in early 1964, your Honor.

The Court: But there was a merger of the two boards in 1968?

A Yes, sir.

The Court: Go ahead.

Mr. Lowden:

Q You may go ahead. A The utility board, for example, in 1965, fed the chipper line of progression in the wood yard and the service crew line of progression, and the brokeman line of progression, to name a few. And the general board, for example, fed the paper machine line of progression in the B mill, and the paper machine line of progression in the A mill, and the digester and recovery lines in the pulp mill, as examples.

The Court: Was the general board at any time all white?

A Yes, sir, at the time that I was employed [1013] by Albemarle it was all white. The first blacks that I know of that went into it went in I believe in early '64.

The Court: Well, the two boards were then integrated about that time and in 1968 they were merged?

A Yes, sir.

Mr. Lowden:

Q Now, looking at the appendix attached to the agreement dated September 1965, I believe you have it in front

of you, Appendix F., would you indicate to the Court which are the skilled lines of progression and predominantly white and which are the unskilled and predominantly Negro, historically, I guess you would say? A Well, in 1965 the yard crew line of progression in the wood yard was fed off the general board, as was the paper machine line in the A mill, the beater room in the A mill, the finishing crew [1014] and shipping crew lines in the product department of the B mill; the lines in the pulp mill, encompassing the—the line is a forking line, the digester, recovery operation, and the caustic and the boiler operator in the old boiler room, fed out of the pulp mill department. That was out of the recovery part of the pulp mill which also has boilers; and the paper machine line of the B mill, the stockroom line of the B mill, the new power plant department, and in the technical service department, both lines of progression there were the mill and the laboratory, testing lines of progression; all others were fed off the utility board.

Q What were the educational and test performance requirement for people who went to the general extra board, new employees going on there? A High school education and satisfactory [1015] performance on the Beta and the Wonderlic. Of course, these tests—I don't mean to imply these tests were the only criteria. People were interviewed and their past experience was considered with other qualifications of that type and they were checked on as to their competence in performing past jobs and their character and that sort of thing.

Q Were there any such requirements for the utility extra board? A Yes, sir, all of those that I mentioned with the exception of the educational requirement and the testing requirement, we did not have those.

The Court: Do you know what the cut-off scores were for those tests?

A Yes, sir. In the Beta it was 100, and on the Wonderlic it was 18.

Mr. Lowden:

Q On both tests? A On either. We have two forms of the [1016] Wonderlic, A and B, to all the applicants, and a score of 18 on either one would suffice. The reason we gave two was because some people may not have been accustomed to taking a test and it is a timed test and they could call the first one for practice if they wanted to, as long as they got an 18 on either one.

Q All right, sir. I think you were asked about paragraph 10.4.1. Would you pick up from there and give us a little further explanation of seniority? A Yes, sir. This paragraph 10.4.1 means that vacancies will be filled and reductions in force accomplished in accordance with the following procedure; this makes cross-reference back to 10.1.1 which has the qualifications involved in it, so this is assumed throughout this. But assuming qualifications are relatively equal, if the vacancy is expected to [1017] continue for a period of more than two weeks then people will be considered for promotion across shift lines. Or if the reduction is anticipated to be for more than two weeks then people will be moved across shift lines to take care of the reduction.

Then we have another provision in the next paragraph as to how this takes place if the vacancy is to be less than two weeks, and the reason for this distinction is that you've got four groups of people in the shift groups that man a paper mill, in order to cover the work twenty-four hours a day, seven days a week. They rotate and according to a schedule

and one particular group, group A, let's say, is on the first shift for several days and then they go to the third shift and then to the second shift and then they're off, this sort of thing. This is a schedule they operate on [1018] and if it's for a shorter period of time, say a vacancy occurs, somebody's out sick, even on vacation for less than two weeks, it is impractical and uneconomical to move up and fill that vacancy across shifts by taking a back tender, say the machine tender's out and you take a back tender from group B and move him across to fill in on the shift that group A is working.

This is I say impractical and uneconomical because it disrupts the efficient working of this crew that work together as a team to put a stranger, so to speak, in amongst them there, in the first place, and then these people also have some personal considerations. They may ride to work in car pools and they've got their personal schedules to fit this particular schedule and if you just move them for a short period of time they may not get any sleep that [1019] particular day.

Furthermore, under the union contract, the company has to pay time and a half for work over eight hours in a given day, in a twenty-four hour period. And if you move a person from one shift to another within the twenty-four period he would have worked sixteen hours and the company will be having to pay a premium because somebody's absent. These are some of the reasons.

Then we have the two procedures. If less than two weeks then they move up within the shift or move down within the shift but the next paragraph says if the vacancy is for more than two weeks then we make an adjustment across shift lines. Because it wouldn't be fair to the back tender, for instance, in a situation where that machine tender had say

broken his leg and is going to be out for three months, to put a less [1020] senior back tender up just because he's on the same shift.

10.4.4 is another case where an exception is taken care of and you get into this with union contracts where there has been a long history of negotiations between the parties and the experience is that the contracts get longer and longer to take care of the exceptions.

It's a normal thing for the company to promote within the shift if it's going to be two weeks or less and the company wants to do this. But there may be times, because of the people being frozen in the jobs, that the line is blocked and the company may find it necessary to ask an employee to go to work on another shift. This sets up how this is accomplished.

Back in 10.1.2 there is a penalty for an employee refusing a job advance. We would get people refusing [1021] a temporary job advancement of this type so they have to put in a penalty here and this forces the senior employee who is qualified in the next lower job to take the advancement whether he wants it or not; if he refuses, then he is penalized seniority-wise.

Do you want me to continue with the seniority?

Q Yes. I believe it's section 10.5 that we're down to. A 10.5 says that all of this that I've been reading about and telling about with regard to senority principles and applications does not apply to the maintenance department because it's got a separate provision applicable to it which is Appendix C. and part of this agreement.

Q Do I understand that in the maintenance department you have an apprenticeship program and you enter into that and [1022] and progress automatically to the top if you pass

the apprenticeship program, is that correct? A That is correct. It is a five year training program consisting of on the job and classroom training.

Q And when you get through maintenance apprentice program what are you classified as? A As a general maintenance man, I believe at the conclusion of the program he goes to a maintenance man "C", and continues on through maintenance "C" and "B" is the last step through the program until he gets up to an "A" maintenance employee, who is a generalist who performs all of the different crafts and trades involved in the maintenance of the equipment in the mill.

Q We do not have crafts as such in the maintenance department? A No, sir, this has been a most important [1023] point for this company to maintain a generalist type mechanic who can and does do all of these trades that are listed in Section C.1.4. And this is the purpose of the training program, to train him to be able to do all of these things.

Q There has been reference made many times in this case that the company has no job descriptions, is that true? A Yes, sir, that is true, there are no job descriptions for jobs in this bargaining unit.

Q Tell the Court why that's so? A There are several related reasons for that. As I indicated earlier, for instance, in using this B paper mill line of progression as an example, the people in these jobs work together as a team and they have to work together as a team. Therefore, there is no really clear-cut distinction [1024] between one of these jobs and the next lower job in any instance. There is a more clear-cut distinction between back tender and machine tender than there is between say seventh hand and sixth

hand. These people are working as a team at different places around the paper machine and therefore, the company does not want to be restricted by definitive job descriptions. For instance, that the union might throw up to the company and say, "this person is working out of classification, stop the machine and file a grievance and have a lot of litigation on it." This is a common source of dispute between companies and unions.

I have been in situations with other employers where it severely handicapped the efficient operation of the plant. It is a very costly sort of thing. Because this company has resisted union [1025] union demands to describe these jobs, the idea has been that it could only result in less efficient operation of the mill.

* * *

[1029] Q I believe that basic seniority system was negotiated in 1963, is that correct? A Yes, that is correct.

Q And then in 1965 it remained substantially unchanged, at least as far as this case is concerned? A Yes, sir.

* * *

[1032] The Court: Is the question 'did you take any affirmative action?"

Mr. Lowden: Prior to 1964.

The Court: With respect to what?

Mr. Lowden: Equal employment opportunity. A Yes, sir, I assume you mean with Albemarle.

Q With the Albemarle Paper Company. A One of the first things that I recommended and that we did was with regard to the maintenance apprentice program, the

first year that I was there, in 1963. The opening of the program was advertised and listed in the plant and otherwise through the community, but we didn't get any Negro applicants for this program and in the course of the ensuing year before the next class was to begin about September of 1964, we embarked upon a program to solicit and encourage incumbent Negro employees to apply for participation in the program. And this [1033] resulted in I believe one being selected in the class that began training in September 1964. And this selection process started some months previous to that.

I think after the passing of the Civil Rights Act of 1964 but before the effective date on July 2, 1965, we took some affirmative action and steps.

Q What were they? A We had not had any applications for transfer on the part of any of the black employees from these unskilled lines of progression to the skilled lines of progression, and we thought it would be a good idea to encourage them to make application. And again we solicited and advertised, first for those who had a high school education or equivalent to come in and talk with us about it. As a matter of fact, we went through the records and tried to find those who [1034] had such qualifications and talk with them. I talked with a number of them personally, myself, to encourage them to make application and those who were interested, we gave the Wonderlic and Beta tests to and those who qualified on that, I believe all who qualified were moved into the skilled lines of progression. They started working from the general extra board if there was not an opening available at the time. But they began to move into these lines of progression prior to the effective date of the Civil Rights Act of 1964. And subsequent to that, there wasn't but a handful that had a high school education. So

we then decided to waive the high school education requirement per se if we could be satisfied that they had the educational background to handle these jobs, and we decided to let any who [1035] wished take the Wonderlic and the Beta and if they demonstrated by that means that they could handle the jobs and had the learning ability, we would place them in. This was explained to them and they were sent letters or memos about this and they were called in and talked to about this and a number of them availed themselves of the opportunity; a number of others refused, and this resulted in some more going into the skilled lines of progression.

Q Do you recall approximately when charges were filed by the named plaintiffs in this case, that is, Moody, Mitchell, et cetera? A Yes, sir.

Q Approximately when was that? A It was in July of 1966. We were notified by the EEOC that there was a charge filed against us and subsequently when we got the charge it was dated as having [1036] been signed by plaintiff or plaintiffs in January I believe, of 1966, and subsequently the EEOC told us that they had received the charge in May I believe of 1966. We had heard something through the news media that there was a charge against us some time before we were notified that there was a charge.

* * *

[1037] Q The question was whether or not the EEOC ever gave us an opportunity to respond to the charges. A They sent an investigator in and the investigator told us that we could make a statement of position there but before the deadline for our sending [1038] in our statement the plaintiffs filed suit in this court against us so that our statement

had not even been received by the time that the plaintiffs filed the suit much less a finding of fact or conciliation having taken place.

* * *

[1041] Q Now, turning your attention to the negotiations of the contract that is in evidence now as the Plaintiffs' Exhibit No. 15, and I want to ask you if you have a copy of that in front of you together with a copy of Exhibit F. thereto, and a copy of Appendix F. of the 1965 agreement that you had before? A Yes, sir, I have all three of those exhibits in front of me.

Q With respect to Appendix F. to the agreement which is dated September 23, 1968, does that reflect the changes from the one that had previously been in effect, Appendix F. to the agreement dated September 23, 1965? A Yes, sir. There were quite a number of changes.

[1042] Q Would you explain to the Court when they were made and what the changes are? A All right, sir. Negotiations on this contract took place in August and early September of 1968 and in the early part of 1968, prior to the opening of these contract negotiations, we made some amendments to the 1965 contract with regard to these lines of progression. The company proposed to the union and negotiated with the union and the union concurred in the change in the boiler room department; if you'll notice by comparing the '65 Appendix F. to the '68 Appendix F., you will see that in the '68 only one line of progression appears. And this was negotiated in the early part of 1968 prior to the contract negotiations—

Mr. Chambers: Your Honor, we have set forth in paragraph 11 of the stipulations the matters that are now being testified [1043] to. I don't know if this is amplification of

the stipulations or not but this same matter is set forth in the stipulations.

The Court: Well, let's not duplicate it if it has already been stipulated, Mr. Lowden.

Mr. Lowden: I wanted to amplify what the effect of that is. I think very briefly some of it is in the stipulation, but I would like to have Mr. Bryan make an explanation to you of what it means.

The Court: I'll let him do it. I seem to recall that a similar request was granted for the plaintiffs with respect to someone's testimony. Go ahead.

Mr. Lowden:

Q Let me state to the witness this: that most of these changes are spelled out in the stipulations of facts; could you review them quickly and I will to the one I want to ask you about. A All right.

[1044] Q Go ahead. A Another change that was made in the early part of 1968 was in the beater room of the A paper mill. On the '65 appendix there, notice there are two lines of progression there, beater man, brokeman; and in the '68 in the upper right hand corner you will see that there is only one line of progression.

Q Now, prior to the merger of those lines, the brokeman line came off the old utility extra board and the beaterman came off of the old general extra board, is that correct? A That's correct and the same thing applied in the boiler room, boiler operator came originally from the general extra board through some other jobs and the fireman line came from the utility board.

Changes that were made in the contract negotiations themselves, in the wood yard department, the crane [1045]

operator line of progression and the chipper operator line of progression were dovetailed as shown in the 1968 Appendix F. into one line of progression which was formerly one that came off the general extra board and one that came off the utility board.

Q And could you tell us how that was merged? A Well, as I testified earlier, I kept up with all the developments in this area of my responsibility, such as cases that had been ruled upon. Of course, there were not many at this point but settlements with the EEOC and OFCC and what other employers and unions were doing, and the foremost one was, at that point, particularly in our industry, if not in industry in general, was the *Crown Zellerbach* settlement that had this dovetailing of these lines in the wood yard proposed by Franklin D. Roosevelt, Jr., meeting with the parties [1046] in New Orleans.

The Court: Did you say settlement? A Yes, sir.

The Court: I thought that was an arm's length determination.

Mr. Woods: We settled several, your Honor, before we got into court.

The Court: Judge Heebe made one that did stick, didn't he?

Mr. Woods: He had the same authority that you have, your Honor.

We did meet with FDR, Jr., then chairman of the EEOC, in New Orleans in late '65 or early '66, I believe, and did what they're talking about. But subsequently, that didn't satisfy the government.

The Court: All right, sir.

A That was the state of affairs at that point in time, and this appeared to be what the government at least thought would resolve disputes with regard to [1047] wood yards in paper mills about lines of progression.

And this dovetailing meant that the jobs were ranked according to their pay in the two lines of progression and then they were intermixed, putting it in one line of progression going from the lowest pay to the highest pay, and in our particular case this meant that the chain operator's positions of the yard crew line of progression fell in between the chipper operator number one and the chipper operator number two, to use an example of how this dovetailing worked.

The people that were involved in that retained their seniority status that they had on the old job since as was pointed out in the testimony of one of the witnesses from the wood yard yesterday who was a chipper operator number two, there were subsequent lay-offs and people who had formerly been in the [1048] other line of progression in higher jobs were reduced down and he held onto his job because he had more seniority and they went on down and out, in some instances. Also, this places the people in the course of their seniority as next in line for promotion to the next higher level job, when the openings occur.

Mr. Lowden:

Q Did they, in order to do that, have to pass any tests? A No, sir.

Q Did they have to meet any high school requirements? A No, sir.

Q So the effect of the merger at that time of the lines was you put them in the lines and once you get in there you don't have to take the tests or have a high school education any more, is that right? A That's correct.

Q Go ahead. [1049] A And another change that was made, and these changes came out of what we had found to be the state of development in the industry, particularly the paper mill industry, at this time. And we were trying to put ourselves in a good posture in this case, so that there would be nothing that we hadn't done that would call for injunctive relief.

Mr. Chambers: Your Honor, we object to that and move to strike.

Overruled

A We made some changes, and if you'll look at the upper right hand block of pulp mill there is a job of Kamyr operator on the left hand side. The Kamyr is a piece of equipment that was not related to the equipment operated by these other people and it should not have been in that line of progression. The other people other than the operator himself, who [1050] worked in the Kamyr or in other jobs such as lift truck operator and laborer, and yet they had no opportunity to progress to the top job on that piece of equipment, the Kamyr operator. So we pulled that out and set up a line of progression that you see on the '68 chart, third from the top on the right, that is entitled the Kamyr department. That opened up opportunity for those people to progress on up and those people in the jobs other than Kamyr operator at the time were black and the Kamyr operators were white. And the Kamyr operators were downgraded to stockroom second helpers, that's where they had come from before.

Then the payloader job was in a line of progression as shown under the pulp mill, the lancer, lift truck operator I referred to previously and the salt cake man and laborer, but that is not in the true sense a real line [1051] of progression because those jobs weren't related. They had just been

grouped together as unrelated jobs and somewhere in the past when parties had agreed to put arrows in between to provide a line of progression for people to get the higher job rather than to hire people directly into some higher paying job. So it really made no sense from an occupational standpoint and didn't afford the people in these jobs ample opportunity for advancement. So that pay loader job was placed into the service department line of progression at the top of the line because it was a higher paying job than those other jobs in the service department and it is a piece of equipment that is used in the same manner that the Dempsey dumpster in serving various other parts of the mill, various functions are performed throughout the mill, not just [1052] the wood yard or the pulp mill and so forth. So it made sense there to put that in at the top of that line of progression.

And the service department at that time was filled entirely by blacks. The lancer job that was in that line of progression I mentioned in the pulp mill that had unrelated jobs, was taken and placed into the pulp mill line of progression that feeds from the general extra board, given some other function and named 'utility helper', so that those people could advance on up as far as recovery operator if they were so qualified, which is one of the highest paid jobs in the mill.

The salt cake man job was combined with the job of second fireman in the boiler room because neither of [1053] those two jobs is a full time job and they were somewhat related; the second fireman moved coal in the boiler room and the salt cake man unloaded salt cake for use by the pulp mill, so that they were jobs that had similar functions to perform. And it opened up an opportunity for the salt cake man to progress to higher jobs that we afforded these firemen earlier.

I believe those are the principal changes that we made in that Appendix F.

Q Were they the company's proposals for changes in seniority? A Yes, they were.

Q Did the company and the union agree on some changes in the seniority provisions of the 1968 agreement? A Yes. The principal change was in this matter of transfer that in the 1968 contract resulted in paragraph 10.2.1 and paragraph [1054] 10.2.2 and paragraph 10.2.3.

Q Would you explain to the Court what the effect of those changes you just mentioned were? A Well, we already had this 10.2.1 and in essentially this form in the older contract as I mentioned earlier. It gave employees an opportunity to request transfer to other lines of progression in other departments but in the course of talks with the plaintiffs and the EEOC and in following other employers and union cases, particularly *Crown Zellerbach* and *International Paper Company* and their settlements either with the EEOC or the OFCC, we encountered this objection—that even though the opportunity was there for transfer—which I don't believe was there in the cases of *Crown Zellerbach* and IP—but the point was raised that if an employee did go to another line of progression then he [1055] would have to go to the bottom of the job, he would have to take a pay cut and he would lose his job and department seniority. So in order to eliminate that as a possible objection, we put in 10.2.2, that provided that the transferred employee would be vested with the department and job seniority equal to that held in his last job or equal to that held in the lowest job in the line of progression from which transferred.

It had the effect in the lowest jobs, as I explained earlier, he had cumulative job seniority for every job in that line of

progression and that was tantamount to department seniority and in most instances to plant seniority, since most of them worked only in one line of progression.

This got around that objection. And, incidentally, we got the idea from what these other paper companies had [1056] agreed to with the various government agencies' blessings.

The next one, 10.2.3, has to do with letting the employee not suffer in his rate of pay when he makes a transfer, that is, that he can carry his normal rate of pay over to this other job, even though it normally pays a lower rate, he would be as we say in labor relations, red circled at that rate, he would retain that rate until such time as he got promoted to a job that paid that much or more. So he didn't suffer rate-wise as a result. This was the purpose of those clauses and the reasons that the company and the union put them in.

* * *

[1059] . . . in 1965; we were required to notify the union when major changes of this type were made and the company after evaluating the situation would inform the union of its decision as to the size of the crew and the rate of pay and the union has the right and privilege of meeting with the company for the purpose of renegotiating such rates. All of this was done, entered into negotiation with the union and we had an agreement concerning the lines of progression and jobs and this sort of thing, and explained the whole thing to them, showed them what the power plant was going to consist [1060] of. They agreed that we would have to go outside the find the power plant operators but naturally they were representing the incumbent employees and they were interested in getting any of those in if at all possible, so we had a discussion and review of the qualifications of incumbent employees. We ultimately did take some incumbent em-

ployees as I said, primarily from recovery, to go into the helper positions but we went outside and recruited the power plant operators.

The Court: You kept Birdsong and Norwood? A Yes, sir. Birdsong and Norwood were boiler operators in the old boiler room and as I recall, the company's initial position was that there was no one in the old boiler room who could qualify for any job in the new power plant but the union asked us to go over it with them and we went over every individual [1061] and we had already done this, the management had, so we again went over it with the union and after reviewing the background and qualifications of all these people, the union persuaded us to agree to take Birdsong and Norwood as helpers and provided they could pass some tests.

One was—well, they had to pass these intelligence tests we've been talking about, plus a test that the union agreed to be designed by the power plant superintendent, asking questions about numerical calculations that were required of people in the power plant jobs. This was done and they were successful in passing this and those two were put into the power plant as helpers and they were given training along with the other helpers.

* * *

Cross-Examination

[1062] Mr. Chambers:

Q Mr. Bryan, the Court asked you a moment ago about integrated call boards? A Yes.

Q Would you tell the Court how many white employees you had on the utility board in 1965? A I couldn't say.

Q Did you have any? A I know there were—in 1964 there were a number of blacks on the general extra board and probably at that time there probably weren't any whites on the [1063] utility board because we had some setbacks and the board had gotten too large and we had to even reduce some off of the utility board so it was probably composed of long service people, so they would all be black in all probability.

Q Up until 1965, Mr. Bryan, had you had any whites on the utility board? A Not to my knowledge.

Q So in 1965, would you tell the Court the number of black employees you had on the general board? A I don't recall that number, there were several. I believe you've got that in some exhibit we prepared 'way back then.

Mr. Chambers: Your Honor, in connection with the racial composition of the various boards, I would like to call the Court's attention to subparagraph L. of paragraph 12, appearing on page 9, and this shows [1064] that there were two Negroes on the general board and sixty-two whites, fifty Negroes on the utility board and no whites as of June 30, 1967.

Q Now, Mr. Bryan, you testified that in 1968 you merged the two boards, how did you accomplish this? A Well, all the boards themselves were lists of people and there were two lists and they were just merged into one list with the person with the highest plant seniority I presume at the top of the list.

Q Is it your testimony, Mr. Bryan, that a person who was formerly on the utility board is now called to do what you classify as skilled work? A I would assume that there have been instances in which some have but I would also

assume that there have been instances in which some have not because I know of personal knowledge that some [1065] would not be able to perform work in the skilled lines.

Q During the time you were there after the merger, would you tell the Court the name of one person who was formerly on the utility board who was called to do skilled work? A I doubt if I could. I was in Richmond during that time and the board was under Mr. Moore's direct supervision.

Q So you don't know of any such person, is that correct? A I know that Mr. Moore told me that there were people.

Q Do you know of any person who was formerly on the general board who had been called or was called during the time that you were with the company to do unskilled work, as you term it? A Yes, there have been some.

Q I'm saying do you know of any such persons at all? [1066] A No, I don't know them by name. I know that it was reported to me in my capacity as director of industrial relations that there were some.

Q By Mr. Moore? A Yes.

Q And that was in 1969? A Well, after the time that it was merged.

Q You began high school requirements about 1952, is that correct? A Some time in the early to mid-50's, I don't know what year.

Q Do you know how many white employees were hired subsequent to 1952? A No, I do not.

Q Do you know the number of white employees you hired subsequent to 1952 without the high school education? A During my tenure there, there were no employees of

either race hired on to the general extra board without a high school education or its equivalent that [1067] I know of, with the exception of any who may have falsified their statement as to that.

Q So you don't know of any employee hired subsequent to 1963 when you went with the company without a high school education who was assigned to the general extra board? A No, I don't know of any.

Q Did you follow the same procedure in the employment of personnel where a person or persons were assigned to the utility board, as you did when persons were assigned to the general extra board? A What do you mean by the procedure?

Q Could you tell the Court what procedure you followed when you employed persons who were assigned to the utility board? A Well, as I said a minute ago, the utility board had so many high seniority people on it, we may have hired some for that board during my tenure but I don't recall [1068] it, that it was necessary to hire any. We had problems at times because we weren't getting enough work off of that board to justify keeping that number of people and this is hard on the individuals who are there and not fair to the senior people that are on the board, so on one or more occasions we had a reduction from that board to get it down to the point where they could get more work, the senior people.

* * *

[1111] Q So in paragraph 10.2.1, is the effect of that provision to transfer the previous preference of job seniority to department seniority? A Ten what number?

Q 10.2.1. A 10.2.1 doesn't transfer the individual's seniority, this was why we put in 10.2.2.

Q Well, would the effect of 10.2.1 and 10.2.2 be to transfer the previous reliance [1112] on job seniority to department seniority? A I wouldn't put it that way, you transferred the person's job, department and plant seniority and in most instances because of definition of job seniority it was tantamount to department and plant seniority.

Q All right. Now, 10.2.2 states that if the transfer is granted the employee will be vested with department and job seniority equal to that held on last job or equal to that held in the lower job in the line of progression from which transferred; now, that doesn't transfer plant seniority or give him the plant seniority for promotion purposes within the line of progression, does it? A He doesn't lose his plant seniority by transfer from one line of progression or department to another.

Q It's not plant seniority for purposes [1113] of promotion. A No, sir.

Q And it is not plant seniority for purposes of being bumped back in case of a reduction in work force? A Only if he's bumped off the extra board it's by plant seniority and as I said earlier, it's tantamount to being plant seniority in the bottom job in a line of progression for most people since most of them have been in the same department all their career.

Q But those who have not been in the same department all of their career they had for promotional purposes and bump back purposes only departmental seniority? A Job seniority and departmental seniority that they had in their old department.

Q Now, in paragraph 10.2.1, does not this provision vest the absolute discretion of whether to grant the transfer to the [1114] company? A Yes, sir, it does.

Q So even if a black employee wanted to transfer to another line of progression whether to grant that transfer would be left to the sole discretion of the company, is that correct? A That's correct.

Q In paragraph 10.2.3, does the company in deciding to fill a position, have to give preference to incumbent employees over new hirees from the street? A That wouldn't be under 10.2.3, you mean under 10.2.1.

Q Let's take them both together, 10.2.1 and 10.2.3. A Well, as I answered your previous question, the company has the discretion whether or not to grant the transfer so it's up to the company to decide how to fill the job except where the job is filled from within the line of progression.

[1115] Q Again looking at Exhibit F. attached to the 1968 agreement, if an employee in the wood yard, for instance, take a tractor operator, requested transfer to the A paper mill and the company agreed to the transfer, would you explain to the Court exactly how this would affect him with respect to the job seniority, plant seniority, and department seniority, and let's assume an employee of ten years plant seniority with the company. A You want to assume a certain amount of job seniority?

Q Let's assume a five years job seniority. A Has he been in this same line of progression all this time?

Q Let's assume ten years with the plant, five years on the job, this particular job, tractor operator. A O.k., he would carry his ten years plant seniority over to the A paper mill; [1116] he would carry not just his five years as a tractor operator on the job and department seniority but he would carry his whole ten years if he started ten years ago at the bottom job of laborer and had been in that line of progression the whole time.

Q In the wood yard department? A Yes, sir. He would start over there as a back plugger number 2 with ten years job seniority and this would probably mean that he would be immediately placed at the top of the seniority list of back plugger number 2 and would be the next one in line for promotion to back plugger number 1. And when he got up to back plugger number one, he would probably be at the top of the list again and the next one in line for promotion to front plugger number one and so on, because he had all this service there and this is what this was designed [1117] to do, to put him in a position where he could progress rapidly up the line of progression. We couldn't just put him in at some point further up without knowing these other jobs but give him the benefit of his seniority that he carried with him and move right on up, in event of reduction in force, he would have seniority and he would be the last one laid off out of that back plugger number two, in fact, others would come down from higher jobs and go out the gates on the streets and he would hold on there.

Q If this tractor operator, just for purposes of comparison, moves over, you testified he would have ten years seniority in the department and on the job? A Yes, sir.

Q And if the back plugger number 2 has five years seniority on the job and with the plant, the tractor operator who had transferred would go in with more seniority [1118] for purposes of promotion and bump back than the back plugger number 2? A That's right.

Q Does that contract provision provide for job posting of vacancies? A No, sir, I know of no provision in that contract for posting vacancies.

Q Do you know why you didn't include that in the contract? A Well, it wasn't in there when I got there and I

wasn't about to put it in, I had experience with that and it's a heck of a mess to administer.

Q If a black employee in the former chipper line of progression wanted to transfer to perhaps the A or B paper mill, he wouldn't know of any vacancies in the A and B paper mills without posting the job, would he? A He wouldn't have to know of vacancies, Mr. Chambers, he could file his request today and it would remain on file until [1119] a vacancy occurred and then it is our obligation, obligation of the company to inform him of the vacancy.

Q Now, you were testifying about your familiarity with labor practices in other industries, would you tell the Court whether it is a practice or not a practice for companies to post vacancies? A Posting is in a number of contracts but I am sure I can say I've never signed my name to one with posting in it that wasn't already in there when I took over the responsibility for it.

Q Well, that's a matter that I suppose we have to—

The Court: He doesn't like that particular provision.

Mr. Chambers: I can understand why.

Q Taking the position that you have, Mr. Bryan, an employee really wouldn't know if a vacancy occurred in the other [1120] department, would he, without posting? A Not except by word of mouth; as I said, he doesn't need to know.

Q He wouldn't know if the company granted him the first vacancy? A Oh, he'd find that out, yes, sir.

Q That would be by word of mouth, too? A Yes, but you can be sure that he would find out.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

Civil Action No. 989

JOSEPH P. MOODY, ET AL.,
Plaintiffs,

v.

ALBEMARLE PAPER COMPANY, ET AL.,
Defendants.

Proceedings before the HONORABLE F. T. DUPREE, JR., Judge, Presiding, United States District Court for the Eastern District of North Carolina, Wilson Division, Courtroom No. 1, Raleigh, North Carolina commencing at or about the hour of 9:00 o'clock a.m., August 3, 1971.

APPEARANCES:
(As heretofore noted)

* * *

[1130] The witness, EDWARD C. MOORE, JR., [having previously been duly sworn to tell the truth] returned to the stand and testified as follows:

Direct Examination

Mr. Lowden:

Q Would you just state your name again for the record, Mr. Moore. A Edward C. Moore, Jr.

Q You have testified previously in this matter? A Yes, sir.

Q I believe you have said that you are the person in charge of employment relations at the mill in Roanoke Rapids and in charge of the records and files there pertaining to the employees? A That is correct.

* * *

[1154] Q Since September 23, 1968, has there been any change in the hours that you work in the wood yard department? A Yes, sir.

Q Would you explain what happened there? A There are two types of operations in the wood yard department. It basically breaks down into long wood and chips and short wood which is pulp wood four feet or less. The short wood operations, due to an increase in the facilities for loading chips, and also for the long log operations, the short wood operation was curtailed to two shifts five days a week. This necessarily affected the crane operator, American, large, the chipper operator No. 2, the chain operator, the tractor operator, and the laborers' classifications in the wood yard department.

Q And in the A paper mill department, have [1155] there been any changes there? A Yes. The No. 2 paper machine was shut down the past year and that regressed one-half the total personnel complement in the A paper mill department. The beater room is manned by one beater man.

The Court: How come you to shut that No. 2 machine down? A It was just uneconomical.

Mr. Lowden:

Q Coming down to the product department of the B mill, did something happen there? A Yes, the entire finishing crew department was shut down, I believe in 1969.

The only classification that remains in that dual line of progression, I believe, is core cutter.

Q The what? A Core cutter. This gentleman cuts cores for a paper machine.

Q Did anything happen to the shipping crew? [1156] A No.

Q Was the shipping crew curtailed sometime prior to 1968? A Yes, it had been curtailed prior to 1968.

Q Has anything happened to the Kamyr department? A The Kamyr shut down, I believe it shut down in 1969.

Q What was the reason for the Kamyr in the first place, and why did it shut down, just make it real brief? A The Kamyr was to produce pulp for the papermaking facilities in Richmond, Virginia and as the mill in Roanoke Rapids expanded its production, it required more and more of the pulp produced in the pulp mill. Therefore, we didn't have pulp to sell on the market and our paper machines now can use more pulp than we can produce.

The shipping room department of the A paper mill also curtailed, attendant to the No. 2 paper machine shutting down. [1157] This also affected the A paper mill, A paper mill test men in the service department. We have one A mill test man in the A paper mill at this time.

* * *

[1196] Mr. Belton:

Cross-Examination

* * *

[1220] Q I believe you testified also, Mr. Moore, that you had a merger of the extra boards in 1968, is that correct? A Yes.

Q Prior to the merger in 1968 you had the utility extra board and the general extra board, is that correct? A That is correct.

Q And the utility extra board served certain lines of progression and the general extra board served other lines of progression, is that correct? A That is correct.

Q Do you know if these lines are still being serviced the same way after the merger in 1968? A No, sir, they are not.

Q How are they called off the board, for example? A The purpose of merging the two boards was that we felt that there were possibly some [1221] employees on the utility board who were capable of performing some of the duties in the skilled lines of progression but certainly not all of them. We would like to have assigned them to these areas to determine how they did and if they were satisfactory perhaps give them consideration when vacancies occurred and we did do that.

Q Do you know whether, Mr. Moore, the employees are recalled from the combined board for any and all jobs on the basis of seniority? A I don't understand your definition of recall. Recall to me says that when an employee has been permanently assigned to a job in one of the departments and thereafter demoted to unemployment, he retains the right back to that job or department, and that is called recall.

The Court: You were just talking about when they needed a man for a particular job, would they call them in line of seniority? [1222] A (No answer)

Mr. Belton: Your Honor, I wanted the witness to explain how they operate under the merit situation, the call boards, and I was—

The Court: He says recall has a different definition from apparently your question involved.

Mr. Belton: I realize that, your Honor. I will try to clarify that.

The Court: I was interested in an answer to your question, that's the reason I made the comment.

Mr. Belton:

Q Mr. Moore, do you have a pool of employees who have worked on various jobs on a permanent basis who are now on the call board or who may be on the call board? A That is correct.

Q And do these employees have first recall to openings to those positions for which they held at a permanent time over a senior [1223] employee in terms of plant service who has never worked on the job? A Yes, by seniority. That is my definition of recall. For instance, if I can give you an example of that, say a laborer in the wood yard who has regressed to the call board, if a vacancy occurs because of sickness, vacation, or increased operations, if he is on the call board and he is the most senior of laid off laborers from the wood yard group, he would be the first one to be called or contacted to return to the wood yard.

Q Would the same be true, for example, with a back plugger No. 2 in the A paper mill? A Yes, sir.

Q The employee who worked the job before gets the first recall, right? A If he has been permanently assigned to that job, then we call them on the basis of seniority.

Q Plant, department, or job? [1224] A Well, that goes back to department—

Q Could we get an illustration so we can understand how it operates? Assuming you had two employees on the call board, one worked in the wood yard department as a chain operator and he has worked in the wood yard department ten years, worked on the chain operator's job for one year; the other employee works in the A paper mill department and he has worked that position of fourth hand and has been with the company five years and has worked the position of fourth hand four years, both of these employees are now on the call board, they are not actually working. They need someone to fill the fourth hand position and as between these two individuals—do you understand the illustration? A I'm following you so far.

Q As between these two individuals, who would be recalled under the system as it now operates? [1225] A If the vacancy occurs in the paper mill in the fourth hand classification, actually it would start at the bottom of the line of progression, the employee with the seniority from the paper mill department would be recalled to that classification. The employee from the wood yard who had never worked in the paper mill would have no recall right to that department.

* * *

Mr. Lowden:

Redirect Examination

[1249]

Q For an incumbent employee, that is employees who were employed in 1965, when did we waive high school educational requirements for those people? A In 1965, during the negotiations.

Q And they were offered to take the test without a high school education? A That is correct.

Q Since that time have we ever employed any people without a high school education and without passing the test? A No sir.

Q When we're talking about incumbent employees, are you talking about people who were there some time prior to when we waived the high school education? [1250] A 1965, November 1965.

Q In 1968 I believe we merged the lines of progression and if a man ended up in a merged line of progression could he go up that line of progression without a high school education and without passing the test just like other incumbent employees in that line of progression? A Yes, that is correct.

* * *

[1286] The Court: Will there be any evidence for the defendant union?

Mr. Woods: I am prepared to proceed, your Honor.

First of all, I want to offer, as I said before, the cross-examination of the witness Bryan, on deposition, by Mr. Ledford.

My copy of that deposition is missing a few pages. I believe it is Exhibit No. 32 — beginning on page 578, at line 6, and the balance of the page:

"Q The union proposed in the '65 negotiations that seniority be first by department, then by the plant, did it not? A There was a proposal in the '65 negotiations by the union, I can't quote it but it had to do with having first departmental [1287] "and then plant seniority.

"Q Well, if the company had agreed with the union to that proposal, would that have had the effect of eliminating

these various lines of progression? A To tell you the truth, I don't know what the effect of that would have been other than utter chaos in the mill. That was the wildest proposal in the whole agenda, perhaps, and I told them so.

"Q Well, did you discuss that proposal with them? A Very little.

"Q Well, did they tell you what they had in mind? A I don't believe they did. I can't say they didn't say something about it but I don't recall them [1288] "saying anything because we were not the least bit interested in that proposal. That would destroy our whole system of training and orderly progression and everything else.

"Q On page 14 of the plaintiffs' Exhibit 1, paragraph 1, 'in the fall of '65 the company agreed with the union to waive the high school education requirement for several departments in the case of incumbent Negro employees provided these Negro employees demonstrated sufficient aptitude for learning the work by qualifying on a pre-employment test used for entrance into these departments . . .' "

Mr. Woods: The question is repeated and over on the top of page 580, line 3:

[1289] "Q I just direct your attention to that paragraph and now the question: what steps had the union taken to assist in the opening of all lines of progression? A Well, there wasn't any proposal to open all lines of progression to Negro employees, they were already open to Negro employees.

"Q Well, what I'm really saying is to assist in getting the employees from one line of progression to the more skilled lines, just tell me what that paragraph means. A That paragraph means simply that there was a proposal

through the union presented to us in negotiations concerning the use of pre-employment tests, that we let incumbent Negro employees [1290] "transfer into the general and extra board jobs into the lines of progression leading off of that without making them meet the same criteria as it applied to outside applicants. They made a speech about how these people had worked with us a long time and couldn't we give them some consideration as opposed to people on the outside who never had worked for us."

Mr. Woods: On page 581 at line 14:

"Q Well, the union didn't have anything to do with the institution of or the composition of those tests given either to applicants or to employees, did it? A No, they didn't have anything to do with it except that earlier, as I mentioned, in that first [1291] "validation study I was told that they cooperated in getting people to help validate the tests."

Mr. Woods: And your Honor, turning next to page 582, beginning at line 3,

"Q And did you and the company take it upon yourselves the right to ignore seniority if in its opinion it feels that the employee lacks the ability? A Yes, sir.

"Q And the union can discuss the matter with you, can't they? A Oh, we would discuss it with them.

"Q But in the final analysis the company has reserved unto itself the right to make the decision, hasn't it? A About what, qualifications, promotions?

"Q Yes, sir. [1292] A Well, this is subject to the union contract and whatever is contained in that concerning that. It's therefore not the same as in an unorganized plant, no, sir."

Mr. Woods: And then after an exchange, and he doesn't want to talk about exactly what is in the contract without reference to it, we get down to page 583, line 18:

"Q Now, then, based on that . . ."

Mr. Woods: Section 10 of the contract—". . if you were considering a person for promotion and determined that they were of equal ability, the one with the seniority would obtain the promotion, would he not? A Again, I don't want to interpret the contract . . ."

Mr. Woods: Then, turning next to transcript [1293] page 593, the whole page, your Honor; and this is by Mr. Lowden:

"Q Subsequent to our company's move in the summer of 1964, did we begin complaints about tests, specifically, from a Mr. Joe P. Moody? A Yes.

"Q As a result of Mr. Moody's activities wasn't the question of testing Negro employees put on the agenda in the 1965 negotiations? A I presume it was because the part of the union agenda that related to this was signed by Joe P. Moody."

Mr. Woods: And then he simply asked him as a result of these discussions did they remove the requirement of a high school education as a qualification for incumbent [1294] employees who were able to pass the tests to go from one job to another, and the answer, in effect, was yes.

Those are all the portions of Mr. Bryan's deposition which the union defendant desires in evidence.

It is on the basis of that testimony, your Honor, that we would contend, that we seek a finding of fact, that the union attempted as early as the 1965 negotiations immediately following the effective date of the Civil Rights Act of 1964

to moderate or modify the seniority system at the plant and give more weight to plant seniority, in promotions and demotions in all lines of progression, and also sought by that the right to eliminate dual lines of progression within the departments, as we also sought, in effect, to moderate the use of tests for the older [1295] employees at the plant.

Your Honor, I will call as the union defendant's first witness, Mr. David Mills.

The Court: All right, sir. Before we proceed to that, may I inquire if any interested party desires to call attention to any of the testimony of Mr. Bryan alluded to by Mr. Woods as further explanatory or elucidating the testimony.

* * *

[1298] David Mills, having been first duly sworn to tell the truth, testified as follows:
Mr. Woods:

Direct Examination

* * *

Q What is your occupation, sir? A I am a maintenance employee at Albemarle Paper Company.

Q How long have you worked for Albemarle at Roanoke Rapids? A A little over sixteen years.

Q Are you a member of Halifax Local 425 of the United Papermarkers and Paperworkers? A Yes.

Q Directing your attention specifically from the period 1965 to present, have you held a local union office in local 425? A Yes, sir, I have.

[1299] Q Describe what offices at what time. A From January 1965 until approximately October 1st I was

vice-president, from October 1, 1965 to January 5 of 1971 I was president.

Q Mr. Mills, are you familiar with the provisions of the International Union Constitution which deal with strikes? A Yes, sir.

Q By local unions? A Yes, sir.

Q I hand you a document and I ask that it be marked for identification as Union Defendant Exhibit No. 3, the constitution of the United Papermakers and Paperworkers, AFL-CIO.

(International Union Constitution identified as Defendant Union's Exhibit No. 3.)

Mr. Woods: I am calling his attention, your Honor, specifically to page 53 [1300] which deals with strike procedures where a single local union is involved and where multiple local unions are involved. This is in the single local union situation and is governed by Section 3 at page 23.

Q Is the procedure required for local unions who want to go out on strike governed by Section 3 at page 23 of the International Constitution? A Yes, sir, it is.

Q While you were president of the local up to about 1969 did you have a corresponding provision in the local union bylaws? A No, sir, we did not.

Q However, in 1969 did the local adopt some new bylaws? A Yes, they did.

Q And in those bylaws did you specifically track the bylaws of the International with respect to a two-thirds majority vote by [1301] secret ballot for strikes? A Yes, sir.

Q Mr. Mills, did you participate in the 1965 negotiations while you were vice-president of the local union? A Yes, sir, I did.

Q Without going into them in any great detail, I hand you a document which is marked for identification as Union Exhibit No. 4. A Yes, sir.

Q Please tell the Court what that document is. A It is the union's proposal for contract changes for the negotiations of 1965. (Union's proposal of 1965 identified as Defendant Union's Exhibit No. 4.)

Mr. Woods:

Q Directing your attention to page 3 of that proposal, paragraph a at the top of the page. A Yes, sir.

[1302] Q Does that represent what the union was requesting with respect to Section 10 of the existing contract? A Yes, sir.

Q I notice the first reference is "temporary and permanent vacancies will be filled by employees with the greatest seniority, first by department, and second by plant, "was that proposal discussed with Mr. Bryan for the company? A Yes, sir.

Q What was his reaction? A He didn't seem to be very interested in this proposal and he objected very strenously.

Q Did he characterize his response in any way, that is sort of customary in bargaining? A I believe Mr. Bryan's reply was, "A big fat no," as he put it.

The Court: Did he say it would create [1303] chaos? A Yes, he said in effect that the company just could not live with a situation like this.

Mr. Woods:

Q And he said a big fat no to that proposal? A Yes, that is his answer.

Q What effect would have been the acceptance of that proposal or the maintenance of dual lines of progression within a single department? A Well, sir, it would have had a tendency to do away with dual lines of progression by promoting first by seniority within the department and second by plant seniority.

Q Now, at that time were there actually dual lines of progression within the various departments, some predominantly black and some predominantly white? A Yes, sir, there were.

[1304] Q Much has been said here, as you know, Mr. Mills, about the Moody agenda for the 1965 negotiations. At my request have you collected most, if not all, of these demands for changes in the contract and practices submitted to you prior to 1965 negotiations that were signed by Joe Moody? A Yes, sir.

Mr. Woods: I will ask the reporter to mark for identification as the Defendant Union's Exhibit No. 5 a three page letter addressed to Albemarle Paper Company dated August 17, 1965, with the typewritten signature of Joe P. Moody and various other typewritten signatures below.

(Letter dated August 17, 1965 to Albemarle Paper Company identified as Defendant Union's Exhibit No. 5.)

Mr. Woods:

Q I will ask you, Mr. Mills, to state if [1305] that was one of his demands submitted to the union as well as to the company on or about that day? A Yes, this is one of them.

(Letter signed by Joe P. Moody marked for identification as Defendant Union's Exhibit No. 6.)

Q I show you another document which has been marked for identification as Defendant Union's Exhibit No. 6 and ask you if this is another demand submitted by Moody to the union for presentation to the company? A Yes, it is.

Q Again referring to the year 1965? A Yes, sir.

(Multi-page letter signed by Joe P. Moody identified as Defendant Union's Exhibit No. 7.)

Mr. Woods:

[1306] Q I have asked the reporter to mark for identification as Union Exhibit No. 7 a multi-page exhibit consisting of various demands submitted by Moody to the company and the union prior to 1965 negotiations; is that more demands of Mr. Moody and his associates, that they asked the union to take up with the company. A Yes, it is.

Q Did the union in fact take up with the company Mr. Moody's agenda? A Yes, sir.

Q I believe Mr. Bryan has testified that there was a separate session on his demand. A Yes, sir, that's right.

Q Was Mr. Moody present at the time? A Yes, sir.

Q And was he permitted to argue and negotiate these demands? A Yes, sir.

[1307] Q And did the union assist him on some of them? A Yes, we did.

(Joe Moody agenda identified as Defendant Union Exhibit No. 8.)

Mr. Woods:

Q I show you another document which consists of two pages and is marked Union Defendant's Exhibit No. 8 which is headed "Joe Moody Agenda" and is in handwriting, and I ask you to state if you recognize that handwritting? A Yes, sir.

Q Whose handwriting is it? A It is Mr. Reavy Irby's handwriting.

Q And who is he? A He is the International representative from Richmond.

Q And does this memorandum in Irby's handwriting represent the company's responses or answers to the Moody agenda? [1308] A Yes, sir.

Mr. Woods: Your Honor, I offer into evidence Union Defendant's Exhibit Nos. 2 through 8 inclusive.

The Court: Very well, let them be received.

(Union Defendant's Exhibits 2 through 8 inclusive admitted in evidence.)

Mr. Woods:

I will ask the clerk to mark as Union Defendant's Exhibit No. 9 for identification the multi-page document headed "Union Agenda, UPP Local 425, 1968."

(Union Agenda, UPP Local 425, 1968, identified as Union Defendant's Exhibit No. 9.)

Mr. Woods:

Q I will ask the witness to state if that was the union's agenda for the negotiations during 1968? A Yes, sir, it is.

[1309] Q And whose handwriting appears on the agenda? A That is mine, sir.

Q And those notes were simply made as you went through the bargaining negotiations, is that right? A Yes, sir.

Q On this document, I call your attention to paragraph 7 at the bottom of page 1, Section 10, page 16, 10.1.1 etc., and continuing through all of page 2 dealing with Section 10 of the contract. A Yes, sir.

Q Are those the changes that the union proposed in 1968 in the seniority provisions of the contract? A Yes, sir, they are.

Q Going back, Mr. Mills, to the 1965 negotiations, after those negotiations were concluded did you receive a final offer for a new contract from the company? [1310] A Yes, sir.

Q What was the practice of the local union when you received such a final offer? A We read the proposals to the body and had a vote on it to either accept or to ratify the contract.

Q And what was the action of the local, were you present when it occurred? A No, sir. Mr. C. V. Bullock was.

Q Were you present when the body voted? A Yes, I was present.

Q What was the action of the body? A The body voted overwhelmingly to accept it.

Q Were there black members present at that time, to the best of your recollection? A Yes, sir.

Q Did you see any of them vote for the acceptance of the contract? A Well, I don't remember seeing anyone vote [1311] to turn it down, no, sir, in fact, the acceptance was so great they gave the union committee a standing ovation.

Q Back in the 1968 negotiations, what was the company's reaction to your proposal for further changes in paragraph 10 dealing with seniority and transfer? A Well, sir, they were not willing to accept our proposals as written, but they offered several counterproposals that were eventually accepted.

Q And among those counterproposals there was included the red circling that both Mr. Bryan and Mr. Moore referred to in their testimony, is-that true? A Yes, sir.

Q Ultimately did the union committee take back the company's final offer including the proposals on seniority to the local union meeting in the same manner as was [1312] done in 1965? A Yes, sir.

Q Were you present? A Yes, sir.

Q I assume that you presided this time as president of the local? A Yes, sir.

Q Was there a vote on it? A Yes, sir, there was.

Q Can you tell us the approximate margin of approval or disapproval? A We had two votes on this. It was turned down by the body the first time and then we had a strike vote. They voted not to strike and we carried the proposal back to the body and voted by secret ballot and they voted approximately three to one to accept.

Q If I understand you correctly, first they voted to reject it, the company's offer? [1313] A Yes, sir.

Q Then you put a strike vote to them and they voted not to strike? A Yes, sir.

Q So then you put the company's offer to them on a secret ballot and they voted about three to one to accept it? A Yes, sir.

Q Now, Mr. Mills, Mr. Bryan and Mr. Moore have testified regarding the merger of the lines of progression which occurred in late 1967, in 1968, and some degree of contract negotiations in 1968, will you please tell us in your own words briefly, what the union's roll was in bringing about the merger of those lines of progression during that

period? A Well, some of these lines were merged in an agreement between the company and the union before the negotiations of 1968 and this was done in an attempt [1314] to reach some conciliation before the EEOC and we had tentatively agreed to some of these terms when the meeting was held between the company and the union. The company had these agreements written up as they wanted to present them to us and we agreed to the changes.

* * *

Mr. Woods:

Q Just to clarify your last answer, Mr. Mills, to the question about the union's role in the merger of the lines of progression, is it correct that the union representatives and company representatives met in conciliation under the [1315] auspices of the EEOC several times during '68—or rather '67 and early 1968? A Yes, sir.

Q And do I understand you to mean that at one of the conferences with the EEOC the union and the company agreed to revise certain lines of progression? A Yes, sir.

Q And then the company wrote it out and presented it to the union and the union accepted it? A Yes, sir.

Q And were there other lines of progression discussed for merger at or about that time, the time of the 1968 negotiations? A Yes, sir.

Mr. Woods: Your Honor, it is already a stipulation of fact, the joint Exhibit 1 showing the precise lines of progression which were merged.

[1316] The Court: Yes, sir, I recall.

Mr. Woods:

Q In your negotiations with the company and the contract that you had with the company, has there ever been a

provision governing the flow of employees from the extra board to the various departments and lines of progression? A No, sir, there has not.

Q Has the union attempted to negotiate such a provision of one type or another? A Yes, sir. We have tried to fill all jobs in the lines of progression from the call board.

Q I assume everyone here is aware, including yourself, sir, that North Carolina is what is called a right-to-work state? A Yes, sir.

Q Has the union ever had any control over the company's hiring policy or qualifications for hiring? A No, sir.

[1317] Q Are those unilaterally established by the company? A Yes, sir, they are.

Q Have there ever been any provisions in the contract requiring the company to post vacancies as they occur? A No, sir. We attempted that in 1968 negotiations but we were not successful.

Q And you heard Mr. Bryan the other day explain his position on that question, did you not? A Yes, sir.

Q And that was the position he gave you during the negotiations? A Yes, sir.

Q A plaintiff's witness named James A. Jones testified the other day about having been involved in an arbitration, in connection with a grievance he took to the union, do you recall that [1318] arbitration? A Yes, sir.

Q What was that about? A It was over a disciplinary suspension of Mr. Jones for his allegedly refusing to come to work when instructed by the watchman, I believe it was.

Q On that kind of a grievance that didn't involve a discharge, did it, sir? A No, sir.

Q Is it the union practice to take it up through each step of the grievance procedure described in the contract and being unable to get a satisfactory solution, then you request arbitration? A Yes, sir.

Q Were you present at the arbitration? A Yes, sir.

Q And was there an International representative present also who assisted in presenting the matter to the arbitrator? [1319] A Yes, sir.

Q Did you win the arbitration? A No, sir, we did not.

Q While we are on the subject of arbitration, Mr. Mills, did you also take a grievance of Joseph P. Moody to arbitration in 1967? A Yes, sir, we did.

Q What was the origin of that grievance? A I believe it was four and a half days suspension of Mr. Moody for insubordination.

Q I believe Mr. Moore referred to this when he was giving the personnel record for Mr. Moody during his testimony, is that true? A Yes, sir, he did.

(Four page document dated July 27, 1967 signed by Nathan Caton, identified as Defendant Union's Exhibit No. 10.)

[1320] Mr. Woods:

Q I show you a document, Mr. Mills, that has been marked for identification as Defendant Union's Exhibit No. 10 which is a four page document bearing the date of July 27, 1967 and bearing the signature of the arbitrator, Mr. Nathan Caton, and I ask you to state what that is. A That, sir, is the arbitrator's decision on the Joe P. Moody grievance.

Q The decision speaks for itself, of course, Mr. Mills, but did the arbitrator deny the grievance? A Yes, sir, he did.

* * *

[1322] The Court: What do you seek to show, Mr. Woods, by going into the facts that motivated the arbitrator to reach this decision?

Mr. Woods: I seek to show approximately three things, your Honor. First, I seek to show what counsel has anticipated, that the union was vigorous and alert in defending the rights of its membership, black and white alike, even to the extent of going through the expense and effort of an arbitration.

* * *

[1326] Mr. Woods:

Q Mr. Mills, the plaintiff's witness by the name of Ethoria Jones testified regarding two testing letters he claims [1327] he had received and several conversations or at least a conversation that he had with you about them, do you know Mr. Ethoria Jones? A Yes, sir, I do.

Q Do you recall his testimony on direct? A Partly.

Q Let me put it to you this way, will you give us your best recollection of what conversation you had with Mr. Jones about these testing letters? A Well, back some time in 1965, I believe it was, Mr. Jones got up at a regular union meeting and stated that he had taken this test and had passed it and later Mr. Jones and several other black employees and union members claimed that Mr. Jordan, the chief watchman, I call him, I guess that's his position, had told them that if they took this test and passed it that they would have to [1328] give up their job that they held, their regular jobs, and go on call and wait until these other jobs came open.

We took this up with the company at a later date but in the meantime Mr. Jones sent me word by Jeremiah Webb

that the company had claimed that he took the wrong test and would have to take it over. So I wanted to check and I checked with the personnel department and they said they had no record of his having ever taken the test. So I related this to Webb, Jeremiah Webb, and he later came back to me and told me that Jones, Ethoria Jones, took the test with two of the Harding boys. So I went back and checked with the Harding boys, one of them, C. I. Harding, and asked him if Jones had taken the test at the same time he did, and he said that he did [1329] not. So this message I sent back to Ethoria Jones.

Later he came back with a story that he took the test in the pulp mill's superintendent's office, which this I also checked out, and they assured me, the company did, that there had never been any tests administered in the pulp mill's superintendent's office.

Then Mr. Jones sent me word that he had a letter from the company indicating that he had in fact taken and passed the test. And at this time I told him if he would get the letter to me, that I would go in and clean the personnel department out, if your Honor please, are the words that I used, and he later told me that he hadn't been able to locate the letter, that he had it in his file but he must have misplaced [1330] it somewhere and he never did produce it. I came to the conclusion that Mr. Jones hadn't taken the test. He had led me down several blind alleys. I never found any concrete evidence of his having taken the test at all.

Q Now, another employee by the name of Henry Mason I believe he testified he was first employed by the company in 1936 or 1937 and he was telling us of his desire to transfer from his then current job back to the maintenance department where he had been employed much earlier in the

company's career. Do you recall ever having a discussion with him, Mr. Mason, about the proposed transfer to maintenance? A Yes, sir.

Q Would you tell us about that. A Well, the first I heard about that, was [1331] Mr. Masons' shop steward, Mr. W. C. Rivers, he came to me and told me that Mason wanted to transfer back into the maintenance department. I told him that I would do what I could and Mr. Mason came to see me. He asked me the same thing and I told him that I would see what I could do for him.

So I went to the personnel department and they told me if he wanted to transfer to come by the office and pick up a transfer form and fill it out requesting a transfer. This message I carried back to Mr. Mason and he told me that he would get the form. A little later I asked him if he had done this and he said yes, but he couldn't fill it out, so I told him if he would bring it to me I would fill it out for him. He never did bring it. Later when I asked [1332] him about it again he told me that he didn't sign any papers to get out of maintenance and he wasn't going to sign any to get back in and that was the end of that.

Q Mr. Mills, there has been a lot of testimony in the record about the power plant staffing some time in 1965 and the resulting curtailment of the boiler room, steam and bark boiler operations, without reworking all that material that is already in the record, I ask you just this one question.

Was any grievance ever presented to you by any of the black employees involved in the curtailment operations— A No, sir.

Q —seeking a transfer into the power department? A No, sir, there was not.

Q And did you in behalf of the union subsequently have something to do between contracts [1333] with negotiating

with the company for a revised line of progression to give the boiler department employees, including Negro employees, a higher end of the line progression rate to aspire to? A Yes, sir, we did, but mainly to provide more work for these people who had been laid off and/or moved back to the call board from the old coal boiler. We made an agreement with the company to put two of the incumbent white utility men back on the call board and open this job up to some of the employees from the old boiler room and we put this job then in the line of progression with the old coal boilers which would allow these people to work as a utility man at the power boiler and work on up to boiler operator in the old boiler.

Q That was a relatively high-paying job? [1334] A Yes, sir.

* * *

Cross-Examination

Mr. Belton:

[1338] * * *

Q My question was, Mr. Mills, at the time that it came to your attention that some black employees who were in the boiler room and their job opportunities were being affected by the installation of the power plant, did it also come to your attention that they felt that their job opporunities were being affected because they were black. A Not that I recall.

Q I think that you have identified, Mr. Mills, some exhibits, Nos. 7, 6, you have identified several exhibits, Mr. [1339] Mills, that you said were presented to you by Mr. Moody and other black employees at the plant, is that correct? A Yes, sir.

Q And these were prior to the 1965 contract negotiations? A Yes, sir.

Q Did it come to your attention, Mr. Mills, at the time that these were presented to you that the employees on whose behalf they were presented were contending that they were not being afforded equal job opportunities because they were black? A I have read that in the Joe P. Moody agenda. But I believe you referred to a grievance. We took these complaints up with the company as a matter of negotiations in 1965, not as a matter of going through the grievance procedure. We took it up in negotiations.

Q I was asking you whether or not these [1340] complaints were predicated on or came to your attention that they were complaining that they felt as black men they were not getting equal opportunities with the company? A I guess you could say that, sir.

Q Did you investigate to see whether or not they were being discriminated against? Did you investigate the race aspect of these complaints? A No. We have never so far as I know in the local union negotiated anything on a racial basis. We have never gone out and asked for anything for a black person or a white person, we have asked for it as members of our local union.

[1366] * * *

Mr. Woods: Redirect Examination:

Q Mr. Mills, I'm not quite sure I understood one of your answers on cross-examination by Mr. Belton, about trying to negotiate special provisions for Negro employees. Did the union while you were negotiating for it in '65 to '68 ever make any contract proposals which applied to blacks only or whites only? A No, sir, we never have.

Q Did you ever negotiate from the premise of whether one group of employees was black or white? A No, sir.

Q And when you consider complaints of individual members of the union or employees [1367] in the unit, did you ever distinguish between black and white?

Objection.

A No, sir, nothing as far back as I have been able to search the records of the union do they indicate in any place what a person's race is.

Q Mr. Mills, Mr. Lowden asked you a question about the proprosal, what you were really proposing in 1965 was still not plant seniority but departmental seniority was the controlling condition for moving within a line of progression and if adopted by the company would have eliminated dual lines of progression, do you remember the question? A Yes, sir.

Q Now, under both the '65 and the '68 contracts, I believe the company reserved to itself the right to determine, to have [1368] a final say on whether anybody transferred, is that correct? A Yes, sir.

Q So as it stands today, regardless of what the union's position is, a man doesn't get transferred until the company says so, is that right? A That's right.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

Civil Action No. 989

JOSEPH P. MOODY, ET AL.,
Plaintiffs,

v.

ALBEMARLE PAPER COMPANY, ET AL.,
Defendants.

Proceedings before the HONORABLE F. T. DUPREE, JR., Judge, Presiding, United States District Court for the Eastern District of North Carolina, Wilson Division, Courtroom No. 1, Raleigh, North Carolina commencing at or about the hour of 9:00 o'clock a.m., August 4, 1971.

APPEARANCES:
(As heretofore noted)

* * *

[1378] WARREN DAVIS, having been first duly sworn to tell the truth, testified as follows:

Direct Examination

Mr. Woods:

* * *

[1399] Mr. Woods:

Q Mr. Davis, what is the whole source of income or revenue of the local union No. 425?

Mr. Chambers: Objection.

Overruled.

Mr. Chambers: Your Honor, I don't see how that has any relevance.

The Court: Yes, sir, I'm inclined to agree. He can answer it and I can't see any harm done.

A It is the dues from the local members.

Mr. Woods:

[1400] Q What are those dues? A Five dollars per month.

Q And I take it that all of the employees in the bargaining unit are not members of the union? A That is correct.

Q Then there are some Negro employees who are members of the union? A Yes, sir.

Q And there are some Negro employees who are not members of the union? A Yes, sir.

Q Is the same thing true of the white employees? A Yes, sir.

Q At the present time what is the approximate value of the financial assets of the local union?

[1403] * * *

Q Can you answer my last question? A The assets are less than $20,000.

* * *